



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 24 दिसम्बर, 2018/03 पौष, 1940

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Dharamshala, the 31<sup>st</sup> March, 2018*

**No.Shram (A) 6-2/2014 (Awards).**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour



Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	100/15	Radha Lal	E.E. I&PH/HPPWD, Killar	01-12-2017
2.	388/15	Narain Singh	E.E. I&PH/HPPWD, Killar	01-12-2017
3.	594/15	Kanshi Ram	E.E. I&PH/HPPWD, Killar	01-12-2017
4.	593/15	Kesar Singh	E.E. I&PH/HPPWD, Killar	01-12-2017
5.	449/15	Sheesham Kumari	E.E. I&PH/HPPWD, Killar	01-12-2017
6.	528/15	Bimla Devi	E.E. I&PH/HPPWD, Killar	01-12-2017
7.	556/15	Sukh Devi	E.E. I&PH/HPPWD, Killar	01-12-2017
8.	302/16	Karam Lal	E.E. I&PH/HPPWD, Killar	04-12-2017
9.	16/16	Om Kumar	E.E. I&PH/HPPWD, Killar	04-12-2017
10.	156/15	Suraj Ram	E.E. I&PH/HPPWD, Killar	05-12-2017
11.	177/15	Sukh Dyal	E.E. I&PH/HPPWD, Killar	05-12-2017
12.	82/14	Subhash Mehra	M/S Larsen & Toubro Ltd.	07-12-2017
13.	75/14	Ram Singh	M/S Larsen & Toubro Ltd.	07-12-2017
14.	604/16	Rajiv Goswami	M/S Jagran Prakashan	11-12-2017
15.	818/16	Janak Singh	E.E.HPPWD, Nurpur	16-12-2017
16.	14/17	Joginder Singh	E.E.HPPWD, Nurpur	16-12-2017
17.	257/14	Satnam Singh	M/S Arvind Casting	16-12-2017
18.	142/17	Hem Chand	E.E. I&PH Mandi	19-12-2017
19.	189/16	Devki Nandan	E.E. HPPWD, S/Nagar	19-12-2017
20.	250/14	Gopal Singh	D.F.O. Gohar	20-12-2017
21.	256/15	Inder Singh	D.F.O. Suket	20-12-2017
22.	234/15	Manohar Lal	D.F.O. Suket	20-12-2017
23.	252/15	Pyar Lal	D.F.O. Suket	20-12-2017
24.	349/15	Sita Ram	D.F.O. Suket	20-12-2017
25.	257/15	Tulsi Ram	D.F.O. Suket	20-12-2017
26.	255/15	Bhag Singh	D.F.O. Suket	20-12-2017
27.	286/15	Dharam Pal	D.F.O. Suket	20-12-2017
28.	258/15	Desh Raj	D.F.O. Suket	20-12-2017
29.	235/15	Karam Singh	D.F.O. Suket	20-12-2017
30.	259/15	Lachhi Ram	D.F.O. Suket	20-12-2017
31.	247/15	Prem Lal	D.F.O. Suket	20-12-2017
32.	321/15	Jeet Ram	D.F.O. Suket	20-12-2017
33.	249/15	Deep Ram	D.F.O. Suket	20-12-2017
34.	200/15	Nagu Ram	D.F.O. Suket	20-12-2017
35.	199/15	Beli Ram	D.F.O. Suket	20-12-2017
36.	103/13	Deep Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
37.	108/13	Sudarshan	M.D. Crest Steel & Power Pvt.Ltd.	30-12-2017
38.	109/13	Ashok Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
39.	397/14	Ram Krishan	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
40.	69/13	Ashish Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
41.	89/13	Ram Dass	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
42.	101/13	Mangal Singh	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
43.	102/13	Kamal Kishore	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
44.	97/13	Manoj Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
45.	98/13	Sandeep Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017



46.	100/13	Mukesh Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
47.	96/13	Mohammed Shreef	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
48.	93/13	Ashwani Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
49.	92/13	Pawan Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
50.	91/13	Krishan Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
51.	86/13	Tarsem Lal	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
52.	70/13	Gulzari Lal	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
53.	90/13	Tara Chand	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
54.	66/13	Shaeef Mohammed	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
55.	67/13	Ram Lal	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
56.	68/13	Parkash Chand	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
57.	104/13	Om Parkash	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
58.	105/13	Vijay Kumar	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
59.	106/13	Tilok Raj	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
60.	107/13	Ram Swaroop	M.D. Crest Steel & Power Pvt. Ltd.	30-12-2017
61.	261/12	Gen. Secty. DAV	D.A.V Managing Committee & others	30-12-2017

By order,

NISHA SINGH, IAS

Addl. Chief Secretary (Lab. &amp; Emp.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)  
(CAMP AT CHAMBA)**

Ref. No. : 100/2015

Date of Institution : 04-3-2015

Date of Decision : 01-12-2017

Shri Radha Lal s/o Shri Purcan Chand, r/o Village Chask, P.O. Seichu, Tehsil Pangi,  
District Chamba, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P.  
. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:



“Whether the industrial dispute raised by the worker Shri Radha Lal s/o Shri Puran Chand, r/o Village Chask, P.O. Seichu, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 26-01-2011 regarding his alleged illegal termination of service during August, 2004 suffers from delay and laches? If not, whether termination of the services of Shri Radha Lal s/o Shri Puran Chand, r/o Village Chask, P.O. Seichu, Tehsil Pangi, District Chamba, H.P. during August, 2004 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1981 who continuously worked till August, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1<sup>st</sup> May, 1998 to 1<sup>st</sup> September, 2007. In the end of month of August, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of August, 2004. He further prayed for reinstatement in service *w.e.f.* month of August, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1981 to August, 2004 be counted 160



days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.1994 having completed 10 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Mool Raj Upadhayay vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 25 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.7.2015 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent during the year August, 2004 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*



3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR.*
4. Whether the claim petition is bad on account of delay and laches on part of petitioner as alleged. If so, its effect? . . . *OPR.*

*Relief:*

9. For the reasons detailed here under, my findings on the above issues are as follows:—
- Issue No.1* : Yes
- Issue No.2* : Discussed
- Issue No.3* : No
- Issue No.4* : Discussed
- Relief* : Petition is partly allowed awarding lum sum compensation of Rs.1,30,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 4 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till August, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangri Sub Division Chamba District and remained engaged from 1994 to August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service



and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 114 days in the year 1994, 171 days in 1996, 156 days in 1997, 41 days in 1998, 132 days in 1999, 123 days in 2000, 94 days in 2001, 49.5 days in 2002, 71 days in 2003 and 59 days in 2004 and thus a total of his service in 1994 to 2004 in 10 years he had worked for 1010.5 days in his entire service period. Be it noticed that except the years 1994 and 1996 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 59 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex.



PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in August, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between



petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghbir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court.) In view of the legal principles laid down by this Court in the above judgment, the



reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-operative Marketing-cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.



19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised



industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1010.5 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 6 ½ years i.e. demand notice was given on 26-1-2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 60 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as Prabhakar Vs. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,30,000/- (Rupees one lakh thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No.3 :*

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.



*Relief :*

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,30,000/- (Rupees one lakh thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1<sup>st</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 388/2015  
Date of Institution : 18-8-2015  
Date of Decision : 01-12-2017

Shri Narain Singh s/o Shri Chinta Mani, r/o Village Ghissal, P.O. Sach, Tehsil Pangi,  
District Chamba, H.P. *.Petitioner.*

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D, Tehsil Pangi, District Chamba, H.P.  
*.Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.



**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Narain Singh s/o Shri Chinta Mani, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 27.08.2012 regarding his alleged illegal termination of service during August, 2005 suffers from delay and laches? If not, whether termination of the services of Shri Narain Singh s/o Shri Chinta Mani, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during August, 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of July, 1994 who continuously worked till August, 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi, Tehsil and District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August, 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1<sup>st</sup> May, 1998 to 1<sup>st</sup> September, 2007. In the end of month of August, 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the



month of August, 2005. He further prayed for reinstatement in service *w.e.f.* month of August, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to August, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2003 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 25 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2005, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 16.2.2016 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 27.8.2012 *qua* his termination of service during August, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.



2. Whether termination of the services of petitioner by the respondent *w.e.f.* August, 2005 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue No. 3 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

*Relief :*

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

*Issue No.1* : Discussed

*Issue No.2* : Yes

*Issue No.3* : Discussed

*Issue No.4* : No

*Relief* :Petition is partly allowed awarding lum sum compensation of Rs.70,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till August, 2005 whereas the claimant/petitioner alleges that he had worked from 1994 to August, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year 1997 and not in 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have



worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to August, 2005. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 60 days in the year 1997, 28 days in 2000, 65 days in 2002, 124 days in 2003, 100 days in 2004 and 84 days in 2005 and thus a total of his service in 1997 to 2005 in 06 years he had worked for 461 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 84 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.



15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2005 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in August, 2005, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wage privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from



which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghbir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar &**



**Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In *Ratan Chandra Sammanta and Ors. v. Union of India and Ors.* (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-operative Marketing-cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.



17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963 Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.



I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 461 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about seven years *i.e.* demand notice was given on 27.8.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 44 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 *i.e.* Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as Prabhakar v. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which



the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

*Issue No. 4 :*

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief :*

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1<sup>st</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SHRI SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR  
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 594/2015  
Date of Institution : 19-12-2015  
Date of Decision : 01-12-2017

Shri Kanshi Ram s/o Shri Thakur Dass, r/o Village Thandal, P.O. Purthi, Tehsil Pangi,  
District Chamba, H.P. . *Petitioner.*



*Versus*

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O. P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Kanshi Ram s/o Shri Thakur Dass, r/o Village Thandal, P.O. Purthi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 05.04.2012 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, whether termination of services of Shri Kanshi Ram s/o Shri Thakur Dass, r/o Village Thandal, P.O. Purthi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go, envisaged under Section 25-G of the Act. It is further alleged that respondent/department



had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1994, Balwant in 1996, Sher Singh in 1996, Jai Dass in 1998, Tek Chand in 1999, Trilok Chand in 2002, Hari Ram in 2003 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1992 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2002 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of



demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 18.8.2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 05.04.2012 *qua* his termination of service during Sept., 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.
2. Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was illegal and unjustified as alleged? ..*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

*Relief:*

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.1* : Discussed

*Issue No.2* : Yes

*Issue No.3* : Discussed

*Issue No.4* : No

*Relief* :Petition is partly allowed awarding lump sum compensation of Rs.75,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of



respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1995 till September, 2004 whereas the claimant/petitioner alleges that he had worked from 1994 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1995 to September, 2004 and not from 1994 to October, 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for



applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 25 days in the year 1995, 84 days in 1997, 27 days in 1999, 130 days in 2000, 95.5 days in 2001, 116 days in 2002, 114 days in 2003 and 97 days in 2004 and thus a total of his service in 1995 to 2004 in 08 years he had worked for 688.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 97 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Ld. Dy. D. A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 02.11.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 08 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.



17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghbir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute,



between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4]** it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

**15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5]** this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

**16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to**



the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. his services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial



discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as Tapash Kumar Paul Vs. BSNL & another reported in AIR 2015 SC 357 wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only four situations when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. reported in AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment AIR 2015 SC supra, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and another vs. Chaman Singh relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by



ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of Mackinon Machenize cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 688.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about eight years *i.e.* demand notice was given on 5-4-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 *i.e.* Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of 2013. *Ld. Dy. D.A.* representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as Prabhakar v. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances



of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

*Issue No. 4 :*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief :*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1<sup>st</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Chamba)**

Ref. No. : 593/2015

Date of Institution : 19-12-2015

Date of Decision : 01-12-2017

Shri Kesar Singh s/o Shri Subha Ram, r/o Village Jhalwas, P.O. Karyas, Tehsil Pangi,  
District Chamba, H.P. . . . . . *Petitioner.*

*Versus*

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi,  
District Chamba, H.P. . . . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Kesar Singh s/o Shri Subha Ram, r/o Village Jhalwas, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 30-12-2011 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, whether termination of services of Shri Kesar Singh s/o Shri Subha Ram, r/o Village Jhalwas, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1995 who continuously worked till September, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial



Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Balwant who appointed in 1996, Sher Singh in 1996, Jai Dass in 1998, Tek Chand in 1999, Trilok Chand in 2002, Hari Ram in 2003 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2003 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It



is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.12.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 30.12.2011 *qua* his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

*Relief:*

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.1* : Discussed

*Issue No.2* : Yes

*Issue No.3* : Discussed

*Issue No.4* : No

*Relief* : Petition is partly allowed awarding lump sum compensation of Rs.1,25,000/- per operative part of award.



**REASONS FOR FINDINGS***Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub Division Chamba District and remained engaged from 1995 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangti Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making



correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 164 days in the year 1995, 110 days in 1996, 126 days in 1997, 124 days in 1998, 126.5 days in 1999, 112 days in 2000, 122 days in 2001, 75 days in 2002, 131 days in 2003 and 108 days in 2004 and thus a total of his service in 1995 to 2004 in 10 years he had worked for 1086.5 days in his entire service period. Be it noticed that except the years 1996 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 108 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, ld. counsel for petitioner relied upon Ex. PW1/D the order dated 02.11.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against



respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference



by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S. M. Nilajkar & Ors. v. Telecom District Manager, Karnataka [4]** it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the



case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:



Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. Her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable.

[Paras 21 and 22]

Limitation Act, 1963-Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as Tapash Kumar Paul vs. BSNL & another reported in AIR 2015 SC 357 wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered in incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only four situations when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. reported in AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment AIR 2015 SC *supra*, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and another vs. Chaman Singh relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137



of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of Mackinon Machenize cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1086.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about seven years *i.e.* demand notice was given on 30.12.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 *i.e.* Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of 2013. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court



reported in AIR 2016 SC 2984 titled as Prabhakar v. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

*Issue No. 4 :*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief :*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1<sup>st</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Chamba)**

Ref. No. : 449/2015  
Date of Institution : 29-10-2015  
Date of Decision : 01-12-2017

Smt. Sheeshan Kumari w/o Shri Dhian Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Sheeshan Kumari w/o Shri Dhian Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar Division, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil-received on 9.4.2012 regarding her alleged illegal termination of services during October, 1999 suffers from delay and laches? If not, whether termination of services of worker Smt. Sheeshan Kumari w/o Shri Dhian Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./ H.P.P.W.D., Killar Division, Tehsil Pangi, District Chamba, H.P. during October, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1989 who continuously worked till December, 1999 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the



petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1994, Man Dei in 1994, Sher Singh in 1996, Balwant in 1996, Dila Ram in 1996, Tek Chand in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of December, 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of December, 1999. She further prayed for reinstatement in service *w.e.f.* month of December, 1999 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1989 to December, 1999 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.1999 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1989 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'.



It is also contended that if petitioner had been terminated in 1999 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order dated 28-6-2004 Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19-12-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua her termination of service during October, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during December, 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

*Relief :*

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.1* : Discussed

*Issue No.2* : Yes

*Issue No.3* : Discussed

*Issue No.4* : No



*Relief*

:Petition is partly allowed awarding lump sum compensation of Rs.1,30,000/- per operative part of award.

**REASONS FOR FINDINGS***Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1989 continuously worked till October, 1999 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1989 to October, 1999. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1



specifically admitted that no departmental inquiry was initiated against petitioner whenever she absented from duty. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 94 days in the year 1989, 56 days in 1991, 116 days in 1992, 96.5 days in 1993, 169 days in 1994, 81 days in 1995, 158 days in 1996, 173 days in 1997, 152 days in 1998 and 149 days in 1999 and thus a total of her service in 1989 to 1999 in 10 years she had worked for 1244.5 days in her entire service period. Be it noticed that except the years 1989, 1991, 1992, 1993 & 1995, 1996 and 1998 & 1999 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 149 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. Some of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1989 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court.



On the other hand, ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 05.10.2015 of Hon'ble Administrative Tribunal *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 1999, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation *vs.* M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh *vs.* General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena



of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4]** it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the



real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble



Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as Tapash Kumar Paul vs. BSNL & another reported in AIR 2015 SC 357 wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to her credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only four situations when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. reported in AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular



mode of recruitment and applying the ratio of this judgment AIR 2015 SC supra, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and another vs. Chaman Singh relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of Mackinon Machenize cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1244.5 days as per mandays chart on record and that the services of petitioner were disengaged in October, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about thirteen years *i.e.* demand notice was given on 9.4.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the



year 2013 *i.e.* Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of 2013. *Ld. Dy. D.A.* representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as Prabhakar vs. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,30,000/- (Rupees one lakh thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

*Issue No. 4 :*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, *Ld. Dy. D.A.* representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief :*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,30,000/- (Rupees one lakh thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1<sup>st</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA)  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)  
(CAMP AT CHAMBA)**

Ref. No. : 528/2015

Date of Institution : 21-11-2015

Date of Decision : 01-12-2017

Smt. Bimla Devi w/o Shri Hoshiyar Siingh, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O. P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Bimla Devi w/o Shri Hoshiyar Singh, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 25.3.2012 regarding her alleged illegal termination of services during August 2004 suffers from delay and latches? If not, whether termination of the services of Smt. Bimla Devi w/o Shri Hoshiyar Singh, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1995 who continuously worked till October 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/



artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 1995, Jai Dass in 1998, Prakash Chand in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 2005. She further prayed for reinstatement in service *w.e.f.* month of October 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to October 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2003 having completed 08 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be



agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D, copy of notice dated 2.5.2009 Mark-X and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.4.2016 for determination:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 25.3.2012 qua her termination of service during August 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.
- (2) Whether termination of the services of petitioner by the respondent during August 2004 is/was illegal and unjustified as alleged? . . .OPP.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? . . .OPR.
- (5) Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.1* : Discussed

*Issue No.2* : Yes

*Issue No.3* : Discussed

*Issue No.4* : No

*Relief* :Petition is partly allowed awarding lump sum compensation of Rs.75,000/- per operative part of award.



**REASONS FOR FINDINGS***Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1996 till August 2004 whereas the claimant/petitioner alleges that he had worked from 1995 to October 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1996 to August 2004 and not from 1995 to October 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1996 to August 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays



chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner whenever she absented from duty. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 57 days in the year 1996, 86 days in 1997, 132 days in 1998, 31 days in 1999, 114.5 days in 2001, 120 days in 2002, 95 days in 2003 and 54 days in 2004 and thus a total of her service in 1996 to 2004 in 08 years she had worked for 689.5 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 54 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. Some of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.



16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Id. Counsel for petitioner relied upon Ex. PW1/D the order dated 22.9.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 08 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in August, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Id. Counsel of petitioner, Id. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue



regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the



relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intentment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble



Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. Her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as Tapash Kumar Paul Vs. BSNL & another reported in AIR 2015 SC 357 wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to her credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only four situations when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. reported in AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment AIR 2015 SC *supra*, claim of



petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and another Vs. Chaman Singh relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of Mackinon Machenize cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 689.5 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about eight years *i.e.* demand notice was given on 25.3.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by Id. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 *i.e.* Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's



case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of 2013. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as Prabhakar v. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment (2016) supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

*Issue No. 4 :*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief :*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1<sup>st</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA)  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 556/2015

Date of Institution : 04-12-2015

Date of Decision : 01-12-2017

Smt. Sukh Devi w/o Shri Roshan Lal, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D./I.&P.H. Killar Division (Pangi), District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Sukh Devi w/o Shri Roshan Lal, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi) District Chamba, H.P. vide demand notice dated 20-03-2012 regarding her alleged illegal termination of services during July 2004 suffers from delay and latches? If not, whether termination of services of Smt. Sukh Devi w/o Shri Roshan Lal, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi) District Chamba, H.P. during July 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1997 who continuously worked till October 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/



artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Jai Dass who appointed in 1998, Prakash Chand in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1997 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2005 having completed 08 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be



agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D, copy of notice dated 2.5.2009 Mark-X and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 30.3.2012 *qua* her termination of service during July, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during July, 2004 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No. 1* : Discussed

*Issue No. 2* : Yes

*Issue No. 3* : Discussed

*Issue No. 4* : No

*Relief* : Petition is partly allowed awarding lump sum compensation of Rs. 60,000/- per operative part of award.



**REASONS FOR FINDINGS***Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till July 2004 whereas the claimant/petitioner alleges that he had worked from 1997 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till July 2004 and not in October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to July 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in July, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays



chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner whenever she absented from duty. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 101 days in the year 1997, 52 days in 1998, 151 days in 1999, 133 days in 2000, 11 days in 2003 and 47 days in 2004 and thus a total of her service in 1997 to 2004 in 06 years she had worked for 495 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 47 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. Some of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of Central Bank of India *Vs.* S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.



16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, ld. counsel for petitioner relied upon Ex. PW1/D the order dated 01.10.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 06 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in July, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue



regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka[4] it was held by this Court as follows:—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the



relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex



Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. Her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as Tapash Kumar Paul Vs. BSNL & another reported in AIR 2015 SC 357 wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to her credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only four situations when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. reported in AIR 2014 SC (Supp) 121, Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of



recruitment and applying the ratio of this judgment AIR 2015 SC *supra*, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and another Vs. Chaman Singh relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of Mackinon Machenize cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 495 days as per mandays chart on record and that the services of petitioner were disengaged in July, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about eight years *i.e.* demand notice was given on 30.3.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 *i.e.* Assistant



Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of 2013. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as Prabhakar v. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

*Issue No.4 :*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief :*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1<sup>st</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 302/ 2016

Sh. Karam Lal s/o Sh. Heera Lal, Village Kutah, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, I&PH/ HPPWD, Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

04-12-2017 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge, Labour Court-cum-Industrial  
Tribunal, Kangra at Dharamshala, H.P.*

04-12-2017 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:  
04-12-2017

Sd/-  
(K. K. SHARMA)  
*Presiding Judge, Labour Court-cum-Industrial  
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 16/ 2016

Sh. Om Kumar s/o Sh. Bansi Lal, r/o V.P.O. Karyuni, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*



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*Versus*

The Executive Engineer, Killar Division, HPPWD, Killar (Pangi), District Chamba, H.P.  
..Respondent.

04-12-2017 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-  
(K. K.SHARMA)  
*Presiding Judge, Labour Court-cum-Industrial  
Tribunal, Kangra at Dharamshala, H.P.*

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04-12-2017 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his Id. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:  
04-12-2017

Sd/-  
(K. K.SHARMA)  
*Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 156/2015

Date of Institution : 04.4.2015

Date of Decision : 05.12.2017

Shri Suraj Ram s/o Shri Sobha Ram, r/o Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P.  
..Petitioner.



*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D., Killar Tehsil Pangi, District Chamba, H.P. . . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Suraj Ram s/o Shri Sobha Ram, r/o Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 10.10.2010 regarding his alleged illegal termination of services *w.e.f.* October, 1996 suffers from delay and laches? If not, whether termination of services of Shri Suraj Ram s/o Shri Sobha Ram, r/o Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *w.e.f.* October, 1996 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On 21<sup>st</sup> January, 2017 the corrigendum had been received from the appropriate Government whereby the reference has been partly modified in the aforesaid terms:

“In partial modification of this Department's Notification of even number dated 25-03-2015, the date of termination of workman Shri Suraj Ram s/o Shri Sobha Ram may be read as “July 2003” instead of “October, 1996”, which was inadvertently recorded in the said notification”.

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1991 who continuously worked till July, 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of July, 2003 by an oral order without any reason whereas several other co-workers who were



junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1<sup>st</sup> May, 1998 to 1<sup>st</sup> September, 2007. In the end of month of July, 2003 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of July, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of July, 2003. He further prayed for reinstatement in service *w.e.f.* month of July, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1991 to July, 2003 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2001 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

5. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24 & 26 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.



6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

7. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

8. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 12.8.2015 and issue No.1 recasted and was framed on 01.12.2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* July, 2003 is/was illegal and unjustified as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR.*
4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . . . *OPR.*

*Relief :*

10. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.1* : Yes

*Issue No.2* : Discussed

*Issue No.3* : No

*Issue No.4* : Discussed

*Relief* : Petition is partly allowed awarding lump sum compensation of Rs.1,20,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No.1, 2 and 4 :*

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.



12. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1994 till July, 2003 whereas the claimant/petitioner alleges that he had worked from May, 1991 to July, 2003. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in 1994 and not on 1991. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

13. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub Division Chamba District and remained engaged from 1994 to July, 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in July, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

14. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in



between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

15. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 188 days in the year 1994, 126 days in 1995, 164 days in 1996, 146 days in 1997, 102 days in 1998, 83 days in 1999, 61 days in 2001, 72 days in 2002 and 30 days in 2003 and thus a total of his service in 1994 to 2003 in 09 years he had worked for 972 days in his entire service period. Be it noticed that except the years 1995 and 1997 to 2003 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 30 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

16. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

17. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C were



primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

18. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in July, 2003, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

19. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghbir Singh Vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference



by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka[4]** it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the



delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

20. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

21. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:



Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% P.A. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 972 days as per mandays chart on record and that the services of petitioner were disengaged in July, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about seven years *i.e.* demand notice was given on 10.10.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 40 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 *i.e.* Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as



Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh *Vs.* Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. *Ld. Dy. D.A.* representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as Prabhakar Vs. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3 :*

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, *Ld. Dy. D.A.* representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief :*

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 5<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 177/2015

Date of Institution : 04.4.2015

Date of Decision : 05.12.2017

Shri Sukh Dyal s/o Shri Sher Chand, r/o Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D., Killar Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Sukh Dyal s/o Shri Sher Chand, r/o Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 18.8.2010 regarding his alleged illegal termination of services *w.e.f.* September, 1999 suffers from delay and laches? If not, Whether termination of services of Shri Sukh Dyal s/o Shri Sher Chand, r/o Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *w.e.f.* September, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On 21<sup>st</sup> January, 2017 the corrigendum had been received from the appropriate Government whereby the reference has been partly modified in the aforesaid terms:

“In partial modification of this Department's Notification of even number dated 25-03-2015, the date of termination of workman Shri Sukh Dyal s/o Shri Sher Chand may be read as “September, 2004” instead of “September, 1999”, which was inadvertently recorded in the said notification.

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis



in the month of May, 1994 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1<sup>st</sup> May, 1998 to 1<sup>st</sup> September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service *w.e.f.* month of September, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as *Rakesh Kumar Vs. State of H.P.* and to any other relief petitioner is entitled.

5. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained



that petitioner had left the work of his own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

7. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

8. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 12.8.2015 and issue No.1 recasted and was framed on 01.12.2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* September, 2004 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . . .*OPR.*

*Relief:*

10. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.1* : Yes

*Issue No.2* : Discussed

*Issue No.3* : No

*Issue No.4* : Discussed

*Relief* :Petition is partly allowed awarding lump sum compensation of Rs.1,60,000/- per operative part of award.



**REASONS FOR FINDINGS***Issues No.1, 2 and 4 :*

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

13 Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

14. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken



by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

15. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 161 days in the year 1994, 169 days in 1995, 167 days in 1996, 154 days in 1997, 114 days in 1998, 143 days in 1999, 101 days in 2000, 27 days in 2001, 120 days in 2002, 125 days in 2003 and 86 days in 2004 and thus a total of his service in 1994 to 2004 in 11 years he had worked for 1367 days in his entire service period. Be it noticed that except the years 1997 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 86 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

16. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India *Vs.* S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

17. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. These



judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

18. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation *Vs.* M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

19. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh *Vs.* General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue



regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka[4]** it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of



delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

20. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

21. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced



by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after *six years*. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1367 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about six years *i.e.* demand notice was given on 18.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 47 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014



titled as Raghbir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 *i.e.* Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in AIR 2016 SC 2984 titled as Prabhakar Vs. Joint Director Sericulture Department and another. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No.3 :*

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.



Announced in the open Court today this 5<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 82/ 2014

Sh. Subhash Mehra s/o Sh. Sarwan Ram, r/o Village Jhonowal, P.O. Garhimansowar, Tehsil Gar-Shankar, Distt. Hoshiarpur, Punjab. *..Petitioner.*

*Versus*

1. The Area Manager, M/s Larsen & Toubro Ltd. Area Office, SCO-32, Sector-26 D, Madhya Marg, Chandigarh-160019.

2. The Director/Manager, M/s Intouch Services, SCO-32, Cabin No.-4, Top Floor, Sector 26-D, Madhya Marg, Chandigarh-160019. *..Respondents.*

07-12-2017 Present: None for the petitioner.  
Sh. Mohit Kumar, Adv. Csl. for the respondents

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Kangra at Dharamshala, H.P.*

---

07-12-2017 Present: None for the petitioner.  
Sh. Mohit Kumar, Adv. Csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.



Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:  
07-12-2017

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 75/ 2014

Sh. Ram Singh s/o Sh. Tulsi Ram, r/o Village Changer, P.O. Chamadar, Tehsil  
Nalagarh, Distt. Solan, H.P. . *Petitioner.*

*Versus*

1. The Area Manager, M/s Larsen & Toubro Ltd. Area Office, SCO-32, Sector-26 D,  
Madhya Marg, Chandigarh-160019.

2. The Director/Manager, M/s Intouch Services, SCO-32, Cabin No.-4, Top Floor,  
Sector 26-D, Madhya Marg, Chandigarh-160019. . *Respondents.*

07-12-2017 Present: None for the petitioner.

Sh. Mohit Kumar, Adv. Csl. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*

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07-12-2017 Present: None for the petitioner.

Sh. Mohit Kumar, Adv. Csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his Id. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.



Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:  
07-12-2017

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 604/16

Sh. Rajiv Goswami and other workers c/o Jagran Prakashan Limited, Village Banoi, P.O. Rajol, Tehsil Shahpur, Near Kangra Airport, Pathankot-Mandi Highway, District Kangra, H.P.  
. *Petitioner.*

*Versus*

The Employer/Management, Jagran Prakashan Limited, Village Banoi, P.O. Rajol, Tehsil Shahpur, Near Kangra Airport, Pathankot-Mandi Highway, District Kangra, H.P. . *Respondent.*

11-12-2017 Present: Sh. Umesh Nath Dhiman, Adv. Csl. for the petitioners.  
Miss Neelam Jaryal, Adv. *vice* of Sh. Narayan Thakur, Adv. Csl. for the respondent.

Statement of claim not filed. Heard. At this stage, Id. Csl. for the petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the Id. Csl. for the petitioner as stated above, the reference No. 604/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.
5. The file, after completion be consigned to the records.

Announced:  
11-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



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**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

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Ref. No. 818/2016

Shri Janak Singh s/o Shri Dharam, r/o Village and P.O. Hatli Jamuwalan, Tehsil Nurpur,  
District Kangra, H.P. . *Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P.

2. The Executive Engineer, HPPWD, Division Jawali, District Kangra, H.P.

. *Respondents.*

16.12.2017 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*

---

16.12.2017 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. Non appearance of petitioner or his Id. Counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Govt. for information and further necessary action/ publication. The file after completion be consigned to the records.

Announced:  
16.12.2017

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*



---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. 14/2017

Shri Joginder Singh s/o Shri Hari Singh, r/o Village Lunder, P.O. Khel, Tehsil Nurpur,  
District Kangra, H.P. . *Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD, Division Jawali, District Kangra, H.P. . *Respondents.*

16.12.2017 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*

---

16.12.2017 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. Non appearance of petitioner or his Id. Counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Govt. for information and further necessary action/ publication. The file after completion be consigned to the records.

Announced:  
16.12.2017

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 257/2014

Date of Institution : 14-8-2014

Date of decision : 16-12-2017

Shri Satnam Singh s/o Shri Mastan Singh, r/o Village & Post Office Nangal Kalan,  
Tehsil Haroli, District Una, H.P. . *Petitioner.*

*Versus*

The Employer, M/s Arvind Casting Private Limited, V.P.O. Nangal Khurd, Tehsil Haroli,  
District Una, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Prammar, AR

For the Respondent : Respondent already exparte

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Satnam Singh s/o Shri Mastan Singh, r/o V.P.O. Nangal Kalan, Tehsil Haroli, District Una, H.P. *w.e.f.* 26-06-2012 by the Employer, M/s Arvind Casting Private Limited, V.P.O. Nangal Khurd, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. It is averred by the petitioner in the statement of claim that he had joined the service of the respondent factory on 1.12.2010 as BOBCAT Operator who worked continuously till 25.6.30212. It is alleged that at end of shift petitioner had been verbally ordered to not attend duty *w.e.f.* 26.6.2012 however next working day when petitioner gone to attend duty but respondent had disallowed to him asked that there was no work. It is alleged that on 27.6. 2012 respondent had recruited fresh hands in place of petitioner. It is further alleged that respondent had not taken permission from appropriate authority as required under Section 25-N of the Industrial Disputes Act, 1947 while terminating the service of petitioner. It is stated that respondent factory is registered factory under the Factories Act, 1948 although the strength of works more than 400. It is alleged that respondent had not given three month's notice under Section 25-N of the Industrial Disputes Act prior to termination of service of petitioner and also no compensation had been given to petitioner till date which required under Section 25-F(b) of the Industrial Disputes Act. It is alleged that petitioner was drawing Rs. 8100/- per month while respondent had illegally terminated service of petitioner It is alleged that at the time of termination of service of petitioner, respondent had chosen hire and fire policy as neither any charge-sheet nor any inquiry or show cause notice was served upon the petitioner prior to



terminating from service. Thus, the act of respondent in terminating service of petitioner is stated to be in gross violation of provisions of Industrial Disputes Act as stated above.

3. It is apt to mention here that as per zimini order dated 19.12.2016 the case was listed for hearing but neither respondent nor his counsel had put in appearance despite proclamation published on 8.11.2016 in Punjab Kesari, Una Chandigarh edition which is local daily newspaper where respondent carried on business activities as well as had its office and thus respondent was preceded against exparte.

4. In order to prove his case petitioner has examined himself as PW1 tendered/proved his affidavit Ex. PW1/A reiterated his stand as maintained in claim petition.

5. The evidence of petitioner which has remained unrebutted as none from the side of respondent had turned up either to contest the claim petition or cross-examine petitioner squarely proves that petitioner was appointed as BOBCAT Operator *w.e.f.* 1.12.2010 who worked upto 25.6.2012. There is sufficient reliable evidence on record establishing that petitioner was not allowed to join his duties after termination from service by respondent. Be it noticed that petitioner has sworn his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein material facts revealing his appointment as BOBCAT Operator and that respondent did not allow petitioner to join his duties on 26.6.2012 when petitioner despite respondent ignoring him on 25.6.2012 that petitioner was not to come for duty on 26.6.2012. Not only this, respondent had not paid compensation to the petitioner as was required under law. Non appearance of respondent is manifestly suggestive of fact that respondent has nothing to state to controvert allegations of the petitioner as maintained in the claim petition coupled with evidence on record. Thus, unrebutted testimony of the petitioner establishes that petitioner had worked for more than 240 days prior to his termination and thus respondent had not complied the provisions of Section 25-F of the Industrial Disputes Act. It has also been established on record that respondent had failed to issue any notice prior to terminating the services of petitioner or make compensation before retrenchment of petitioner and thus, the petitioner is held to have completed 240 days who had not been given any opportunity of being heard before termination of his services as the petitioner had made representation. In so far as salary of petitioner is concerned, he has specifically alleged in his affidavit Ex. PW1/A that he was drawing salary of Rs. 8100/- per month on the date of termination. Although, petitioner has alleged violation of Section 25-G of the Industrial Disputes Act but neither seniority list nor the persons junior to him have been named in affidavit and as such it would be unsafe to hold that respondent had violated Section 25-G of the Industrial Disputes Act. As regards violation of Section 25-N of the Industrial Disputes Act is concerned, no reliable evidence *i.e.* record showing respondent to be having more than 300 workers or any witness of establishment of respondent has been examined. Thus, violation of Section 25-N of the Industrial Disputes Act is held to have not been proved. Since the petitioner has discharged the initial onus by deposing on oath in his affidavit Ex. PW1/A that he was not gainfully employed during the forced idleness, this court is left with no option to hold that after disengagement/termination of petitioner has remained unemployed moreso respondent has filed reply to contest the claim petition but did not lead any evidence. As such, petitioner is held to be not gainfully employed after his termination *i.e.* after 26.6.2012 and therefore the unrebutted evidence of respondent established violation of Section 25-F of the Industrial Disputes Act.

6. In view of the foregoing discussions, termination of the services of petitioner by respondent on 26.6.2012 is hereby set aside and quashed and the respondent is directed to reinstate the petitioner forthwith besides petitioner is further held entitled to 50% back wages from respondent from the date of his illegal termination till his reinstatement by the respondent. The parties, however, shall bear their own costs.



7. The reference is answered in the aforesaid terms.

8. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

9. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of December, 2017.

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE SHRI COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR  
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 142/17

Sh. Hem Chand s/o Sh. Sawnu Ram, r/o V.P.O. Kummi, Tehsil Sadar, District Mandi,  
H.P. . . . . *Petitioner.*

*Versus*

The Executive Engineer, I&P.H. Division Baggi, District Mandi, H.P. . . . . *Respondent.*  
19-12-2017 Present: Petitioner with Sh. R.S. Rana, adv.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Statement of claim not filed. Heard. At this stage, petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference No. 142/17 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs

3. The reference is answered in the aforesaid terms

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
19-12-2017

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. 189/ 2016

Sh. Devki Nandan s/o Shri Molak Ram, r/o Village Tandi, P.O. Silibagi, Tehsil Thunag, District Mandi, H.P. . *Petitioner.*

*Versus*

1. The Executive Engineer, HPPWD Division Sunder Nagar, District Mandi, H.P.
2. The Executive Engineer, HPPWD (B&R) Division Gohar, District Mandi, H.P. . *Respondents.*

19-12-2017 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondents..

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

19-12-2017 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondents

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

19-12-2017

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. 250/ 2014

Sh. Gopal Singh s/o Sh. Netar Singh, Village Guran, P.O. Thachi, Distt. Mandi, H.P.

*. .Petitioner.*

*Versus*

The Divisional Forest Officer, Gohar (Nachan), Tehsil Chachiot, Distt. Mandi, H.P.

*. .Respondent.*

20-12-2017 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Reply filed which is placed on record. Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

Sd/-

(K. K. SHARMA)

*Presiding Judge,*

*Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*

20-12-2017 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondents

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his Id. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:  
20-12-2017

Sd/-

(K. K. SHARMA)

*Presiding Judge,*

*Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**  
(Camp at Mandi)

Ref. No. : 256/2015

Date of Institution : 27-6-2015

Date of decision : 20-12-2017

Shri Inder Singh s/o Shri Sant Ram, r/o Village Dhalu, P.O. Balag, Sunder Nagar,  
District Mandi, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Inder Singh s/o Shri Sant Ram, r/o Village Dhalu, P.O. Balag, Sunder Nagar, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during July, 2000 to September, 2012 and finally during October, 2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in July, 2000 where he continued to work till September, 2012 when his service was finally terminated in October, 2012 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to



time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2000 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* October, 2012 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of July, 2000 where he worked intermittently upto July, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in October, 2012 rather petitioner is stated to be still working till July, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.



6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during July, 2000 to September, 2012 by the respondent is illegal and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during October, 2012 is illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . .*OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . .*OPR*.

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No. 1* : Yes

*Issue No. 2* : Redundant

*Issue No. 3* : Discussed

*Issue No. 4* : No

*Issue No. 5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### **REASONS FOR FINDINGS**

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.



11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2000 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in July, 2000 and is shown to be working in July, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged for 2001, 2003, 2006 to 2008 and 2010, 2011 and 2013. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wager who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in July, 2000 and working intermittently till July, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is



serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no iota of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance qua proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.



*Issue No. 4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No. 5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 234/2015

Date of Institution : 10-6-2015

Date of decision : 20-12-2017

Shri Manohar Lal s/o Shri Devi Ram, r/o Village Gadach, P.O. Rakol, District Mandi, H.P.  
..Petitioner.

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Manohar Lal s/o Shri Devi Ram, r/o Village Gadach, P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during August, 2002 to February, 2013 and finally during March, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in July, 2002 where he continued to work till 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done



by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2002 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of August, 2002 where he worked intermittently upto 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wagers junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be still working till September, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits along-with continuity with compensation.



6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during August, 2002 to February, 2013 by the respondent is illegal and unjustified as alleged? . . . *OPP*.
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . . . *OPP*.
3. If issue No.1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . . *OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . . *OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . . *OPR*.

*Relief :*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No. 1* : Yes

*Issue No. 2* : Redundant

*Issue No. 3* : Discussed

*Issue No. 4* : No

*Issue No. 5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.



11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2002 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in August, 2002 and is shown to be working in September, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2004 to 2008 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in August, 2002 and working intermittently till September, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is



serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.



*Issue No.4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No.5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 252/2015

Date of Institution : 10-6-2015

Date of decision : 20-12-2017

Shri Pyare Lal s/o Shri Lacchi Ram, r/o Village Dhogari, P.O. Rakol, Nagar, District Mandi, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1, The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Pyare Lal s/o Shri Lacchi Ram, r/o Village Dhogari, P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during December, 2004 to February, 2013 and finally during March, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in 2004 where he continued to work till 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done



by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2004 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of December, 2004 where he worked intermittently upto July 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be still working till July, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.



6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 27.4.2016 for determination:

1. Whether time to time termination of the services of petitioner during December, 2004 to February, 2013 by the respondent is illegal and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . . .*OPP.*
3. If issue No.1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . .*OPR.*
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . .*OPR.*

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No. 1* : Yes

*Issue No. 2* : Redundant

*Issue No. 3* : Discussed

*Issue No. 4* : No

*Issue No. 5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3:*



10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2004 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in December, 2004 and is shown to be working in July, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2005 to 2008 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in December, 2004 and working intermittently till July, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that



workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service



from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No.4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No.5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous qua final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 349/2015

Date of Institution : 05-8-2015

Date of decision : 20-12-2017

Shri Sita Ram s/o Shri Kanahaiya Lal, r/o Village Chakrahal, P.O. & Sub Tehsil Nihari,  
District Mandi, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sita Ram s/o Shri Kanahaiya Lal, r/o Village Chakrahal, P.O. & Sub Tehsil Nihari, District Mandi, H.P. during February, 2002 to July 2012 and finally during August, 2012 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in February, 2002 where he continued to work till July, 2012 when his service was finally terminated in August, 2012 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to



time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2002 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* August, 2012 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of February, 2000 where he worked intermittently upto August, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in February, 2013 rather petitioner is stated to be still working till August, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-



14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during February, 2002 to July, 2012 by the respondent is illegal and unjustified as alleged? . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during March, 2012 is illegal and unjustified as alleged? . .*OPP*.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . .*OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . .*OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . .*OPR*.

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No. 1* : Yes

*Issue No. 2* : Redundant

*Issue No. 3* : Discussed

*Issue No. 4* : No

*Issue No. 5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### **REASONS FOR FINDINGS**

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by ld. Counsel for the petitioner as he had made statement before this court on



04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2002 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in February, 2002 and is shown to be working in August, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2004 to 2010. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wager who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in February, 2002 and working intermittently till August, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, ld. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman Again there is no *iota* of evidence on record showing that the respondent had



initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year *more-so* when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial *onus qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.



*Issue No. 4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No. 5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 257/2015

Date of Institution : 27-6-2015

Date of decision : 20-12-2017

Shri Tulsi Ram s/o Shri Mani Ram, r/o Village Gadahach, P.O. Rakol, District Mandi, H.P.  
. *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.  
: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Tulsi Ram s/o Shri Mani Ram, r/o Village Gadahach, P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. July, 2002 to February, 2013 and finally during March, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in July, 2002 where he continued to work till 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover



nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2002 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of August, 2002 where he worked intermittently upto September, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be still working till September, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits along-with continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved



Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during July, 2002 to February, 2013 by the respondent is illegal and unjustified as alleged? . . *OPP.*
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . . *OPP.*
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . *OPP.*
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . *OPR.*
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . *OPR.*

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No. 1* : Yes

*Issue No. 2* : Redundant

*Issue No. 3* : Discussed

*Issue No. 4* : No

*Issue No. 5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.



11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2002 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in July, 2002 and is shown to be working in September, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2003 to 2008 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in July, 2002 and working intermittently till September, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is



serious misconduct requiring initiation of departmental proceedings before taking any action against workman Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.



*Issue No. 4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No. 5:*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 255/2015

Date of Institution : 27-6-2015

Date of decision : 20-12-2017

Shri Bhag Singh s/o Shri Haru Ram, r/o V.P.O. Rakol, District Mandi, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
.. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Bhag Singh s/o Shri Haru Ram, r/o V.P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during November, 2000 to January, 2013 and finally during February, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in November, 2000 where he continued to work till January, 2013 when his service was finally terminated in February, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes



Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2000 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* February, 2013 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of November, 2000 where he worked intermittently upto September, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in February, 2013 rather petitioner is stated to be still working till September, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved



Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during November, 2000 to January, 2013 by the respondent is illegal and unjustified as alleged? . . *OPP*.
2. Whether final termination of services of the petitioner by the respondent during February, 2013 is illegal and unjustified as alleged? . . *OPP*.
3. If issue No.1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . *OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . *OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . *OPR*.

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No. 1* : Yes

*Issue No. 2* : Redundant

*Issue No. 3* : Discussed

*Issue No. 4* : No

*Issue No. 5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### **REASONS FOR FINDINGS**

*Issues No. 1, 2 and 3*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by ld. Counsel for the petitioner as he had made statement before this court on 04-



12-2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2000 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in November, 2000 and is shown to be working in September, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2002, 2003, 2006 to 2008 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wager who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in November, 2000 and working intermittently till September, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, ld. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman Again there is no *iota* of evidence on record showing that the respondent



had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No.4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had



deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No. 5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 286/2015

Date of Institution : 13-7-2015



Date of decision

: 20-12-2017

Shri Dharam Pal s/o Shri Narain, r/o Village Gadahach, P.O. Rakol, District Mandi, H.P.

. *Petitioner.**Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Dharam Pal s/o Shri Narain, r/o Village Gadahach, P.O. Rakol, District Mandi, H.P. during November, 2002 to February, 2013 and finally during March, 2013 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in November, 2002 where he continued to work till February, 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A



and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2002 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of November, 2002 where he worked intermittently upto September, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wagers junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be still working till September, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.



7. I have heard the counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29-3-2016 for determination:

1. Whether time to time termination of the services of petitioner during November, 2002 to February, 2013 by the respondent is illegal and unjustified as alleged? . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . .*OPP*.
3. If issue No.1 & issue No.2 or both are proved in affirmative, to what relief petitioner is entitled to? . .*OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . .*OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . *OPR*.

*Relief:*

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No.1* : Yes

*Issue No.2* : Redundant

*Issue No.3* : Discussed

*Issue No.4* : No

*Issue No.5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2002 who continued to work even after receipt of reference from the



government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in November, 2002 and is shown to be working in September, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2003, 2005 to 2008 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in November, 2002 and working intermittently till September, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.



15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No.4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.



Issue No.5 :

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

\_\_\_\_\_  
**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**  
(Camp at Mandi)

Ref. No.	: 258/2015
Date of Institution	: 27-6-2015
Date of decision	: 20-12-2017

Shri Desh Raj s/o Shri Mai Dhar, r/o Village Bandli, P.O. Rakol, District Mandi, H.P.

. .Petitioner.

*Versus*



The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.  
: Sh. Sunit Thakur, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Desh Raj s/o Shri Mai Dhar, r/o Village Bandli, P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during August, 2002 to February, 2013 and finally during March, 2013 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in August, 2002 where he continued to work till February, 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2002 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that



uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of August, 2002 where he worked intermittently upto September, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be still working till September, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29-3-2016 for determination:

1. Whether time to time termination of the services of petitioner during August, 2002 to February, 2013 by the respondent is illegal and unjustified as alleged? . . . *OPP.*



2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . . *OPP.*
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . *OPP.*
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . *OPR.*
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . *OPR.*

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No.1* : Yes

*Issue No.2* : Redundant

*Issue No.3* : Discussed

*Issue No.4* : No

*Issue No.5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2002 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in August, 2002 and is shown to be working in September, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2003, 2006 to 2008 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.



13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in August, 2002 and working intermittently till September, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of Last come First go having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before



Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No. 4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No.5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my



findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 235/2015
Date of Institution	: 10-6-2015
Date of decision	: 20-12-2017

Shri Karam Singh s/o Shri Tara Chand Maidhar, r/o Village & P.O. Rakol, District Mandi,  
H.P. *. Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
*. Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947



For the Petitioner : Sh. Abhishek Lakhanpal, Adv.  
: Sh. Sunit Thakur, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Karam Singh s/o Shri Tara Chand Maidhar, r/o V.P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during July, 2001 to January, 2013 and finally during February, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in July, 2001 where he continued to work till January, 2013 when his service was finally terminated in February, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2001 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* February, 2013 has become in-fructuous as petitioner had been working intermittently with the department who had



never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of July, 2001 where he worked intermittently upto 2016 as per the mandays chart on record. It has been emphatically denied that petitioner had worked from 2005 to 2008 and 2010 to 2012 with the respondent. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wagers junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in February, 2013 rather petitioner is stated to be still working till February, 2016 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 26-4-2016 for determination:

1. Whether time to time termination of the services of petitioner during July, 2001 to January, 2013 by the respondent is illegal and unjustified as alleged? . . . *OPP*.
2. Whether final termination of services of the petitioner by the respondent during February, 2013 is illegal and unjustified as alleged? . . . *OPP*.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . . *OPP*.



4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . OPR.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . OPR.

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No. 1* : Yes

*Issue No. 2* : Redundant

*Issue No. 3* : Discussed

*Issue No. 4* : No

*Issue No. 5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2001 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in July, 2001 and is shown to be working in February, 2016 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2005 to 2008 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wager who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been



mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in July, 2001 and working intermittently till February, 2016 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, ld. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the



evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No.4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No.5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and



that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No.	: 259/2015
Date of Institution	: 27-6-2015
Date of decision	: 20-12-2017

Shri Lachhi Ram s/o Shri Buddhu, r/o V.P.O. Rakol, District Mandi, H.P. . . . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Abhishek Lakhanpal, Adv.
	: Sh. Sunit Thakur, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:



“Whether time to time termination of the services of Shri Lachhi Ram s/o Shri Buddhu, r/o V.P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during August, 2001 to February, 2013 and finally during March, 2013 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in August, 2001 where he continued to work till 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2001 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become infructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of August, 2001 where he worked intermittently upto September, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner



of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wageer junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be still working till September, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during August, 2001 to February, 2013 by the respondent is illegal and unjustified as alleged? . . . *OPP*.
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . . . *OPP*.
3. If issue No.1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . . *OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . . *OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . . *OPR*.

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:



*Issue No.1* : Yes

*Issue No.2* : Redundant

*Issue No.3* : Discussed

*Issue No.4* : No

*Issue No.5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2001 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in August, 2001 and is shown to be working in September, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2003 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in August, 2001 and working intermittently till September, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period



or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly



senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No. 4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No.5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.



20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 247/2015

Date of Institution : 10-6-2015

Date of decision : 20-12-2017

Shri Prem Lal s/o Shri Danu Ram, r/o Village Banas, P.O. Rakol, District Mandi, H.P.  
.. *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.  
.. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Prem Lal s/o Shri Danu Ram, r/o Village Banas, P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during August, 2002 to February, 2013 and finally during March, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”



2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in August, 2002 where he continued to work till February, 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of "Last come First go" was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to "the Act" for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2002 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become infructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of "Last come First go". It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of August, 2002 where he worked intermittently upto July, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be still working till July, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that



petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification no. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

6. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 27.4.2016 for determination:

1. Whether time to time termination of the services of petitioner during August, 2002 to February, 2013 by the respondent is illegal and unjustified as alleged? . . *OPP.*
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . . *OPP.*
3. If issue No.1 & issue No.2 or both are proved in affirmative, to what relief petitioner is entitled to? . . *OPP.*
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . *OPR.*
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . *OPR.*

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No. 1* : Yes

*Issue No. 2* : Redundant



*Issue No. 3* : Discussed

*Issue No. 4* : No

*Issue No. 5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04-12-2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2002 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in August, 2002 and is shown to be working in July, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2003 to 2009 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31-3-2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wager who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in August, 2002 and working intermittently till July, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically



admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Id. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a



calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No.4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No. 5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.



Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 321/2015

Date of Institution : 21-7-2015

Date of decision : 20-12-2017

Shri Jeet Ram s/o Shri Jeevanand, r/o Village Bagri, P.O. & Sub Tehsil Nihri, District Mandi, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Jeet Ram s/o Shri Jeevanand, r/o Village Bagri, P.O. & Sub Tehsil Nihri, District Mandi, H.P. during June, 2004 to May, 2012 and finally during June, 2012 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in June, 2004 where he



continued to work till May 2012 when his service was finally terminated in June, 2012 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2002 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* June, 2012 has become infructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of July, 2004 where he worked intermittently upto December, 2015 as per the mandays chart on record. It has been emphatically denied that petitioner had worked from 2005 to 2008. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wagers junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in June, 2012 rather petitioner is stated to be still working till December, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.



5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 26-4-2016 for determination:

1. Whether time to time termination of the services of petitioner during June, 2004 to May, 2012 by the respondent is illegal and unjustified as alleged? . . . *OPP*.
2. Whether final termination of services of the petitioner by the respondent during June, 2012 is illegal and unjustified as alleged? . . . *OPP*.
3. If issue no.1 & issue no.2 or both are proved in affirmative, to what relief petitioner is entitled to? . . . *OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . . *OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . . *OPR*.

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No.1* : Yes

*Issue No.2* : Redundant

*Issue No.3* : Discussed

*Issue No.4* : No

*Issue No.5* : Unpressed



*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2004 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in July, 2004 and is shown to be working in December, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2005 to 2008. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31-3-2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in July, 2004 and working intermittently till December, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.



15. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

16. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Id. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated



above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No. 4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No. 5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 249/2015

Date of Institution : 10-6-2015

Date of decision : 20-12-2017

Shri Deep Ram s/o Shri Madu Ram, r/o Village Banas, P.O. Rakol, District Mandi, H.P.

. .Petitioner.

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

: Sh. Sunit Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Deep Ram s/o Shri Madu Ram, r/o Village Banas, P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during November, 2002 to February, 2013 and finally during March, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in November, 2002 where he continued to work till February, 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior persons were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to



time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained and they continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2002 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of November, 2002 where he worked intermittently upto July, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be still working till July, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved



Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 27-4-2016 for determination:

1. Whether time to time termination of the services of petitioner during November, 2002 to February, 2013 by the respondent is illegal and unjustified as alleged? . . *OPP*.
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . . *OPP*.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . *OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . *OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . *OPR*.

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No.1* : Yes

*Issue No.2* : Redundant

*Issue No.3* : Discussed

*Issue No.4* : No

*Issue No.5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### **REASONS FOR FINDINGS**

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on



04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2002 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in November, 2002 and is shown to be working in July, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2003 to 2008 and 2010 to 2012. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31-3-2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wager who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in November, 2002 and working intermittently till July, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, ld. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman Again there is no *iota* of evidence on record showing that the respondent had



initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Chet Ram Block Forest Officer. The statement of said Chet Ram has been obtained under RTI Act Ex. PW2/A-3 in which said Chet Ram had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1<sup>st</sup> January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29.6.2017 said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No.4 :*

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had



deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No.5 :*

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 200/2015

Date of Institution : 04-5-2015



Date of decision

: 20-12-2017

Shri Nagu Ram s/o Shri Dabar Ram, r/o Village Barnog, P.O. Jhungi, Sub Tehsil Nihri, Tehsil Sunder Nagar, District Mandi, H.P. .*Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Devender Kumar, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Nagu Ram s/o Shri Dabar Ram, r/o Village Barnog, P.O. Jhungi, Sub-Tehsil Nihri, Tehsil Sunder Nagar, District Mandi, H.P. during July, 2004 to January, 2013 and finally during February, 2013 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as beldar by the respondent in the month of November, 2004 where he continuously worked till February, 2013 when his service was illegally terminated in the month of February, 2013 by Divisional Forest Officer, Suket Forest Division, Sunder Nagar by oral order. Averments made in the claim petitioner revealed that petitioner had completed 240 days in calendar year 2005 but thereafter respondent had given him fictional breaks in illegal manner with malafide intention by oral order(s) of respondent with the object that petitioner did not complete 240 days. Thus petitioner is claimed to have given artificial breaks and while doing so, respondent arbitrarily and in discriminatory manner retained service of junior beldar namey Baldev, Bega Ram, Parkash and Roshan Lal. It is alleged that at the time to time termination of petitioner as daily wage beldar during November, 2004 to 2013 was sheer discrimination and illegally done at behest of respondent. It is claimed that petitioner was unemployed during period of time to time termination as well as when his services were retrenched without following principle of 'Last come First go' envisaged under Section 25-G of the Industrial Disputes Act. It is alleged that respondent had given artificial and fictional break to petitioner despite having sufficient work and funds besides further maintained that respondent had appointed some new workers in place of petitioner which was to mar seniority of the petitioner who was claiming regularization of his service. It is alleged that feeling aggrieved with the arbitrary and discriminatory manner of respondent, petitioner had approached Labour Officer-cum-Conciliation Officer for settlement his claim by serving a demand notice but the matter could not be resolved despite best efforts of Conciliation Officer in pursuance to which a failure report was submitted to Labour



Commissioner, Shimla, H.P. Accordingly, petitioner prays for regularizing service of petitioner by setting aside artificial or notional break from time to time till date and had also prayed that respondent be directed to regularize service of petitioner with all consequential benefits and seniority and to any other relief to which petitioner is entitled.

4. The respondent contested claim petition, filed reply inter alia taken preliminary objections of maintainability and that on the date of reference of case to this court *i.e.* retrenchment *w.e.f.* February, 2013 become in-fructuous as petitioner had been working intermittently with respondent/department who had never been retrenched from service at any point of time by respondent. On merits admitted that petitioner had been engaged in Jhungi Forest Range in the month of July, 2004 where he worked intermittently till May, 2015 subject to availability of work and funds as is also evident from mandays chart on record filed by respondent. Denied that time to time artificial breaks have been given deliberately by the respondent with the object to defeat the claim of petitioner qua seniority as well as regularization although petitioner had completed 240 days in the year 2005 and thereafter petitioner worked at his own sweet will who attended work of his own sweet will and thus at no point of time service of petitioner had been disengaged or terminated as claimed by petitioner rather petitioner was working intermittently. It is also alleged that petitioner had been working intermittently with respondent/department till May, 2015 who was working much after reference so received from appropriate government. It has been asserted that petitioner had been gainfully employed during time to time break period and thereafter service of petitioner had never been terminated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of mandays chart Ex. PW1/B, copy of seniority list Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, copy of mandays chart of daily wage Ex. RW1/C and closed evidence.

7. I have heard the counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29-3-2016 for determination:

1. Whether time to time termination of the services of petitioner during July, 2004 to January, 2013 by the respondent is illegal and unjustified as alleged? . . . *OPP.*
2. Whether final termination of services of the petitioner by the respondent during February, 2013 is illegal and unjustified as alleged? . . . *OPP.*
3. If issue No.1 & issue No.2 or both are proved in affirmative, to what relief petitioner is entitled to? . . . *OPP.*
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . . *OPR.*
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . . *OPR.*



*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No.1* : Yes

*Issue No.2* : No

*Issue No.3* : Discussed

*Issue No.4* : No

*Issue No.5* : Un-pressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that petitioner in his claim petition alleged that he has been working as beldar with respondent at Forest Range Jhungi, Division Sunder Nagar, District Mandi, H.P. since November, 2004. In reply to para No.1 of the claim petition, respondent had specifically admitted that petitioner had been engaged in the month of July, 2004 and not in November, 2004 as claimed by petitioner however in either situation, petitioner had been engaged and was working with the respondent intermittently as alleged by respondent till month of May, 2015. As such, reference showing final termination of petitioner in the month of February, 2013 by Divisional Forest Officer, Suket Forest Division, Sunder Nagar merits rejection even in the month of May, 2015, respondent has admitted that petitioner had been working intermittently subject to availability of work and funds. The mandays chart Ex. RW1/B also supports the plea of respondent which showed that petitioner had been engaged in July, 2004 and was employed even in the year 2015 in the month of May, it could not be stated that service of petitioner had been finally and illegally terminated in February, 2013. As such, issue No.2 is answered in negative against the petitioner and in favour of respondent.

12. In so far as plea of petitioner having been given recurrent intermittent breaks by the respondent from 2004 to 2013 deliberately and in discriminatory manner, it could be noticed from mandays chart Ex. RW1/B that petitioner had factually worked for 45 days in 2015, 9 days in 2014, 35 days in 2013, 25 days in 2012, 42 days in 2011, 43 days in 2010, 73 days in 2009, 84 days in 2008, 87 days in 2007, 132 days in 2006, 241 days in 2005 and 77 days in 2004. It is also evident from mandays chart that from 2004 to 2015 petitioner had been given work by respondent who could not be stated to have been finally terminated in February, 2013. The grievance of petitioner remains that despite availability of sufficient work, respondent had given break whereas the plea of respondent remains that petitioner of his own choice worked who did not report for duty and thus periodically abandoned the work between 2004 to 2015 but at no point of time his service had been terminated finally as stated above. The grievance of petitioner remains that several junior persons to petitioner had been retained who have now been regularized. The perusal of seniority list Ex. PW1/C shows that Baldev s/o Panna Lal figures at



serial No. 128 who is shown to have joined on 1<sup>st</sup> January, 2007 at Jhungi. Similarly, other beldars/daily wage workers mentioned in the claim petition who were junior to petitioner namely Bega Ram, Parkash, Roshan Lal and Vidya Sagar had joined in January, 2005 whereas petitioner had been engaged in July, 2004 and was certainly senior to him. Bega Ram is shown at serial No. 121 who is shown to have joined on 1<sup>st</sup> January, 2005. Similarly Parkash, Roshan Lal & Vidya Sagar are figuring at serial Nos. 122, 125, 119 respectively who were also shown to joined on 1<sup>st</sup> January, 2005 and 4<sup>th</sup> May, 2005. As such, all the above named had been engaged later than petitioner and despite work with respondent, break in service had been given. In the cross-examination of RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar has shown his ignorance if junior beldar to petitioner have been regularized being a party to the industrial dispute. RW1 being contesting respondent and party to reference petition was expected to know if junior workers to the petitioner have been regularized in service. PW1 petitioner on the other hand has sworn affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. He has maintained deposed about fictional breaks from 2004 to 2013 and denied that he had left the job periodically at his own sweet will. In any case, RW1 as admitted in his reply as well as cross-examination has admitted that no notice was served upon petitioner when he left the job besides there is no explanation from the side of respondent under what situation no notice had been given even while giving fictional break to the petitioner.

13. In so far as the plea of abandonment is concerned, ld. Dy. D.A. for respondent had contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action against petitioner due to absence from duty. It is evident from record that no explanation of petitioner was called, even no show cause notice was issued by respondent to petitioner *qua* absence from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits *moreso* when no notice was issued calling upon petitioner to join his duty or that no charge-sheet was raised. The respondent could not be pleaded ignorance *qua* preceding which were required to be taken when intermittent breaks were being given to the petitioner. Thus, when respondent had engaged several junior workers as enumerated in para No. 2 of the claim petition as well as in cross-examination of RW1 and that there is no reliable evidence *qua* plea of abandonment *moreso* when no notice *qua* absence was served, this court is left with no option but to hold that respondent had violated Section 25-G as well as 25-H of the Industrial Disputes Act ignoring seniority of petitioner. In view of the foregoing discussions, petitioner is held to have been engaged in the month of July, 2004 who had been working with the respondent till 2015 and thereafter as petitioner himself has admitted to be engaged with the respondent even on the date when he made statement before this court on 27.4.2016. As such, the principle of 'Last come First go' envisaged under Section 25-G as well as Section 25-H of the Act is held to have not been followed by respondent while giving intermittent breaks as has been discussed in foregoing paras.

14. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast, in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by



respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to petitioner as has come in evidence which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period as stated above, so he cannot be awarded back wages however petitioner is held entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues no. 1 and 2 & 3 are decided accordingly.

*Issue No. 4 :*

15. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No. 5 :*

16. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2013. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2013, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

17. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement in July, 2004 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(Camp at Mandi)**

Ref. No. : 199/2015

Date of Institution : 04-5-2015

Date of decision : 20-12-2017

Shri Beli Ram s/o Shri Bhoop Singh, r/o Village Pandar, P.O. Barhokari, Sub Tehsil Nihri, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Devender Kumar, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Beli Ram s/o Shri Bhoop Singh, r/o Village Pandar, P.O. Barhokari, Sub-Tehsil Nihri, Tehsil Sunder Nagar, District Mandi, H.P. during November, 2004 to May, 2011 and finally during June, 2011 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as beldar by the respondent in the month of November, 2004 where he continuously worked till June, 2011 when his service was illegally terminated in the month of June, 2011 by Divisional Forest Officer, Suket Forest Division, Sunder Nagar by oral order. Averments made in the claim petitioner revealed that petitioner had completed 240 days in calendar year 2005 but thereafter respondent had given him fictional breaks in illegal manner with malafide intention by oral order(s) of respondent with the object that petitioner did not complete 240 days. Thus petitioner is claimed to have given artificial breaks and while doing so, respondent arbitrarily and in discriminatory manner retained service of junior beldar namey Baldev, Bega Ram, Parkash and Roshan Lal. It is alleged that at the time to time termination of petitioner as daily wage beldar during November, 2004 to 2011 was sheer discrimination and illegally done at behest of respondent. It is claimed that petitioner was unemployed during period of time to time



termination as well as when his services were retrenched without following principle of 'Last come First go' envisaged under section 25-G of the Industrial Disputes Act. It is alleged that respondent had given artificial and fictional break to petitioner despite having sufficient work and funds besides further maintained that respondent had appointed some new workers in place of petitioner which was to mar seniority of the petitioner who was claiming regularization of his service. It is alleged that feeling aggrieved with the arbitrary and discriminatory manner of respondent, petitioner had approached Labour Officer-cum-Conciliation Officer for settlement his claim by serving a demand notice but the matter could not be resolved despite best efforts of Conciliation Officer in pursuance to which a failure report was submitted to Labour Commissioner, Shimla, H.P. Accordingly, petitioner prays for regularizing service of petitioner by setting aside artificial or notional break from time to time till date and had also prayed that respondent be directed to regularize service of petitioner with all consequential benefits and seniority and to any other relief to which petitioner is entitled.

4. The respondent contested claim petition, filed reply inter alia taken preliminary objections of maintainability and that on the date of reference of case to this court *i.e.* retrenchment *w.e.f.* June, 2011 become infructuous as petitioner had been working intermittently with respondent/department who had never been retrenched from service at any point of time by respondent. On merits admitted that petitioner had been engaged in Jhungi Forest Range in the month of November, 2004 where he worked intermittently till September, 2015 subject to availability of work and funds as is also evident from mandays chart on record filed by respondent. Denied that time to time artificial breaks have been given deliberately by the respondent with the object to defeat the claim of petitioner *qua* seniority as well as regularization although petitioner had completed 240 days in the year 2005 and thereafter petitioner worked at his own sweet will who attended work of his own sweet will and thus at no point of time service of petitioner had been disengaged or terminated as claimed by petitioner rather petitioner was working intermittently. It is also alleged that petitioner had been working intermittently with respondent/department till September, 2015 who was working much after reference so received from appropriate government. It has been asserted that petitioner had been gainfully employed during time to time break period and thereafter service of petitioner had never been terminated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of mandays chart Ex. PW1/B, copy of seniority list Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, copy of mandays chart of daily wage Ex. RW1/C and closed evidence.

7. I have heard the counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29-3-2016 for determination:

1. Whether time to time termination of the services of petitioner during November, 2004 to May, 2011 by the respondent is illegal and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of the petitioner by the respondent during June, 2011 is illegal and unjustified as alleged? . . .*OPP.*



3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . . *OPP.*
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . . *OPR.*
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . . *OPR.*

*Relief:*

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No.1* : Yes

*Issue No.2* : No

*Issue No.3* : Discussed

*Issue No.4* : No

*Issue No.5* : Unpressed

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that petitioner in his claim petition alleged that he has been working as beldar with respondent at Forest Range Jhungi, Division Sunder Nagar, District Mandi, H.P. since November, 2004. In reply to para No.1 of the claim petition, respondent had specifically admitted that petitioner had been engaged in the month of November, 2004 as claimed by petitioner however in either situation, petitioner had been engaged and was working with the respondent intermittently as alleged by respondent till month of September, 2015. As such, reference showing final termination of petitioner in the month of June, 2011 by Divisional Forest Officer, Suket Forest Division, Sunder Nagar merits rejection even in the month of September, 2015, respondent has admitted that petitioner had been working intermittently subject to availability of work and funds. The mandays chart Ex. RW1/B also supports the plea of respondent which showed that petitioner had been engaged in November, 2004 and was employed even in the year 2015 in the month of September, it could not be stated that service of petitioner had been finally and illegally terminated in June, 2011. As such, issue No. 2 is answered in negative against the petitioner and in favour of respondent.

12. In so far as plea of petitioner having been given recurrent intermittent breaks by the respondent from 2004 to 2011 deliberately and in discriminatory manner, it could be noticed from mandays chart Ex. RW1/B that petitioner had factually worked for 72 days in 2015, 31 days in 2011, 66 days in 2010, 50 days in 2009, 111 days in 2008, 70 days in 2007, 61 days in 2006, 241 days in 2005 and 51 days in 2004. It is also evident from mandays chart that from 2004 to



2015 petitioner had been given work by respondent who could not be stated to have been finally terminated in June, 2011. The grievance of petitioner remains that despite availability of sufficient work, respondent had given break whereas the plea of respondent remains that petitioner of his own choice worked who did not report for duty and thus periodically abandoned the work between 2004 to 2015 but at no point of time his service had been terminated finally as stated above. The grievance of petitioner remains that several junior persons to petitioner had been retained who have now been regularized. The perusal of seniority list Ex. PW1/C shows that Baldev s/o Panna Lal figures at serial no. 128 who is shown to have joined on 1st January, 2007 at Jhungi. Similarly, other beldars/daily wage workers mentioned in the claim petition who were junior to petitioner namely Bega Ram, Parkash, Roshan Lal and Vidya Sagar had joined in January, 2005 whereas petitioner had been engaged in July, 2004 and was certainly senior to them. Bega Ram is shown at serial No.121 who is shown to have joined on 1<sup>st</sup> January, 2005. Similarly Parkash, Roshan Lal & Vidya Sagar are figuring at serial Nos. 122, 125, 119 respectively who were also shown to joined on 1<sup>st</sup> January, 2005 and 4<sup>th</sup> May, 2005. As such, all the above named had been engaged later than petitioner and despite work with respondent, break in service had been given. In the cross-examination of RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar has shown his ignorance if junior beldar to petitioner have been regularized being a party to the industrial dispute. RW1 being contesting respondent and party to reference petition was expected to know if junior workers to the petitioner have been regularized in service. PW1 petitioner on the other hand has sworn affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. He has maintained deposed about fictional breaks from 2004 to 2011 and denied that he had left the job periodically at his own sweet will. In any case, RW1 as admitted in his reply as well as cross-examination has admitted that no notice was served upon petitioner when he left the job besides there is no explanation from the side of respondent under what situation no notice had been given even while giving fictional break to the petitioner.

13. In so far as the plea of abandonment is concerned, ld. Dy. D.A. for respondent had contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action against petitioner due to absence from duty. It is evident from record that no explanation of petitioner was called, even no show cause notice was issued by respondent to petitioner *qua* absence from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits *moreso* when no notice was issued calling upon petitioner to join his duty or that no charge-sheet was raised. The respondent could not be pleaded ignorance *qua* preceding which were required to be taken when intermittent breaks were being given to the petitioner. Thus, when respondent had engaged several junior workers as enumerated in para No. 2 of the claim petition as well as in cross-examination of RW1 and that there is no reliable evidence *qua* plea of abandonment *moreso* when no notice *qua* absence was served, this court is left with no option but to hold that respondent had violated Section 25-G as well as 25-H of the Industrial Disputes Act ignoring seniority of petitioner. In view of the foregoing discussions, petitioner is held to have been engaged in the month of November, 2004 who had been working with the respondent till 2015 and thereafter as petitioner himself has admitted to be engaged with the respondent even on the date when he made statement before this court on 27.4.2016. As such, the principle of 'Last come First go' envisaged



under Section 25-G as well as section 25-H of the Act is held to have not been followed by respondent while giving intermittent breaks as has been discussed in foregoing paras.

14. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast, in a calendar year as has also been held by Hon'ble Apex Court in case titled as Central Bank of India vs. S. Satyam, 1996 (5) SCC 419. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to petitioner as has come in evidence which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period as stated above, so he cannot be awarded back wages however petitioner is held entitled to relief of continuity in service from the date of initial engagement as well as seniority except back wages for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

*Issue No.4 :*

15. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

*Issue No. 5 :*

16. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2011. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2011, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

*Relief :*

17. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement in November, 2004 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.



19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H. P.**

Ref. No. : 103/13

Sh. Deepak Kumar s/o Shri Rafo Ram, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).
2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office)  
.. *Respondents.*

30-12-2017    *Present:*        Sh. R.K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 exparte as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.103/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.



5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 108/13

Sh. Sudharshan Kumar s/o Sh. Ram Nath, c/o Sh. R.K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab  
. .Petitioner.

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).
2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office)  
. .Respondents.

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 exparte as before.

Sh. N.L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No. 108/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.



5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 109/13

Sh. Ashok Kumar s/o Sh. Multan Singh, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *ex parte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.109/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 397/14

Sh. Ram Krishan s/o Sh. Dhani Ram, c/o Sh. R. K. Singh Parmar, Working President Pb.  
INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.397/14 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 69/13

Sh. Ashish Kumar s/o Sh. Satpal Sharma, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.69/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 89/13

Sh. Ram Dass s/o Sh. Gur Bhagat Singh, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).
2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office)  
.. *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.89/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.
5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 101/13

Sh. Mangal Singh, s/o Sh. Saran Singh c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N.L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.101/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:

30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 102/13

Sh. Kamal Kishore s/o Shri Saran Dass, C/O Sh. R.K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.102/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 97/13

Sh. Manoj Kumar s/o Sh. Trikok Chand, c/o Sh. R.K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.97/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 98/13

Sh. Sandeep Kumar s/o Sh. Tirath Ram, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No. 1 *ex parte* as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.98/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

---

Ref. No. : 100/13

Sh. Mukesh Kumar s/o Sh. Khushal Singh, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab  
. *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.100/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:

30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H. P.**

Ref. No. : 96/13

Sh. Mohmmmed Shreef s/o Jamal Deen c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No. 96/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

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Ref. No. : 93/13

Sh. Ashwani Kumar s/o Sh. Gulab Singh, c/o Sh. R.K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No. 1 exparte as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No. 93/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 92/13

Sh. Pawan Kumar s/o Sh. Jaisi Ram c/o Sh. R. K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No. 1 *ex parte* as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No. 92/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 91/13

Sh. Krishan Kumar s/o Late Sh. Jaswant Singh, c/o Sh. R. K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab  
. .Petitioner.

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office). . Respondents.

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner

Respondent No.1 exparte as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No. 91/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:

30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 86/13

Sh. Tarsem Lal s/o Shri Pritam Chand, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.86/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 70/13

Sh. Gulzari Lal s/o Sh. Hans Raj, c/o Sh. R. K. Singh Parmar, Working President Pb.  
INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punja . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No. 1 *ex parte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.70/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 90/13

Sh. Tara Chand s/o Sh. Jaswant Singh, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (HP).( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.90/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 66/13

Sh. Shaeef Mohmmmed s/o Sh. Jaan Mohmmad, c/o Sh. R. K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab.  
..Petitioner.

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . Respondents.

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 exparte as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, Id. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Id. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.66/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:

30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 67/13

Sh. Ram Pal s/o Sh. Ram Rakha, c/o Sh. R. K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (H.P.) ( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No. 67/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

---

Ref. No. : 68/13

Sh. Parkash Chand s/o Sh. Hiru Ram, c/o Sh. R. K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post office Karluhi, Tehsil Amb, District Una (HP).( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *exparte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No.2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.68/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 104/13

Sh. Om Prakash s/o Sh. Kishan Dass, c/o Sh. R. K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and post Office Karluhi, Tehsil Amb, District Una (HP).( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No.1 *ex parte* as before.

Sh. N. L. Kaundal, A. R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No. 104/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 105/13

Sh. Vijay Kumar s/o Sh. Jagdev Singh, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (HP).( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No.1 *ex parte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.105/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 106/13

Sh. Tilak Raj s/o Sh. Pritam Singh, c/o Sh. R.K. Singh Parmar, Working President Pb.  
INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
post office Karluhi, Tehsil Amb, District Una (H.P.) (Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A. R. for the petitioner.

Respondent No.1 *ex parte* as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No. 2 through their Authorised Representatives, the reference No.106/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



---

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

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Ref. No. : 107/13

Sh. Ram Swaroop s/o Sh. Shankar Dass, c/o Sh. R. K. Singh Parmar, Working President  
Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab . *Petitioner.*

*Versus*

1. The Employer/Managing Director, Crest Steel and Power Pvt. Limited, Village and  
Post Office Karluhi, Tehsil Amb, District Una (HP).( Present Office).

2. The Employer/Managing Director, Crest Steel and Power Pvt. Ltd., # 308, CEE Jay  
House, Dr. Annie Besant Road, Worli, Mumbai-400018 (Corporate Office) . *Respondents.*

30-12-2017 *Present:* Sh. R. K. Singh Parmar, A.R. for the petitioner.

Respondent No. 1 exparte as before.

Sh. N. L. Kaundal, A.R. for the respondent No. 2.

Rejoinder not filed. Heard. At this stage, ld. Authorised Representative for petitioner has made statement that due to some formal/technical defects the present case of petitioner is likely to fail and has prayed for withdrawal of present case with liberty to file fresh case on same cause of action. Ld. Authorised Representative for the respondent No. 2 raised no objection if permission sought for by petitioner is allowed. Statements as stated above recorded and placed on file. In view of the statements so made by petitioner and respondent No.2 through their Authorised Representatives, the reference No.107/13 is hereby dismissed as withdrawn with liberty to petitioner to file fresh case on the same cause of action before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:  
30-12-2017

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-  
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 261/2012  
Date of Institution : 26-6-2012  
Date of decision : 30-12-2017

General Secretary, Himachal Pradesh Private School evam Karamchari Sangh, Palampur,  
Distt. Kangra, H.P., Head Office, Ram Chowk, Ghughar, District Kangra, H.P. . *Petitioner.*

*Versus*

1. The D.A.V. Managing Committee, Chitragupt Road, New Delhi.
2. Principal, D.A.V. Senior Public School, Ambota, Tehsil Amb, District Una, H.P. . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Miss Seema Sharma, Adv.

**AWARD**

1. The following reference has been received from the appropriate Government for adjudication:

“Whether demands raised by the General Secretary, Himachal Pradesh Private School evam Karamchari Sangh, Palampur, Distt. Kangra, H.P. through demand notice dated-01-6-2012 (Copy-Enclosed) to be fulfilled by (i) The D.A.V. Managing Committee, Chitragupta Road, New Delhi (ii) Principal, D.A.V. Senior Public School, Ambota, Tehsil Amb, Distt. Una, H.P. are proper and justified? If yes, what monetary and other service benefits the concerned workers are entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner namely General Secretary, H.P. Private School evam Karamchari Sangh is a registered union under the Trade Union Act, 1926 having its Head Office at Ram Chowk, Ghughar, Palampur, District Kangra, H.P. whereas respondents D.A.V. Trust & Management Society is voluntary organization registered under Societies Registration Act, 1860. Averments made in claim petition reveal that respondent No.1 has educational institutions all over India which has established its branch in 1989 namely D.A.V. Senior Secondary Public School Ambota, Tehsil Amb, Distt. Una hereinafter called respondent No. 2. It further transpires from claim petition that non-teaching employees of respondent No.2 like Drivers, Conductors, Mechanic, Peon and Aaya are the members of the union/petitioners. It is alleged that respondent No. 2 after its establishment in 1989 had appointed several teaching and non-teaching staff in various categories such as PET, TGT, PGT, Teacher-Incharge head of primary level school, Teacher Incharge/Headmaster of middle



school, Head Master of secondary school, Principal and Regional Director, Class IV, Peon, Driver, Watchman, Chowkidar, Sweeper, Mali, Aaya, Conductor, Safaiwalas, Farashes, Electrician, Dafatries, Generator Operator, Packers, Lab-Attendants and Library Attendant. Averments made in the petition further revealed that respondent No.2 has adopted and following all the instructions and guidelines issued by DAV Managing Committee Chitragupt Road, New Delhi hereinafter called respondent No.1 from time to time which is under its control and supervision. The grievance of petitioner remains that respondents had adopted Central Civil Service Rules and benefits like pay scale, gratuity and leave encashment were being given to its employees in all DAV Public Schools, DAV Senior Secondary Schools and DAV Colleges functioning in whole of India and these benefits had been given but several employees of respondent No.2 as reflected in Annexure P1 who were drivers, conductors and mechanic have been deprived of such benefits who are entitled to pay scale from 1-1-1986, 1-1-1996 and 1-1-2006 along-with arrears and other consequential benefits from their initial date of appointment. It is alleged that respondent No. 2 had engaged all its employees as reflected in list Annexure P1 were prior permission from respondent No.1 besides maintained that teaching and some of non-teaching staff working with respondent No.2 had been given regular pay scales as applicable to them as per pay scale prescribed by respondent No.1 but only drivers, conductors and mechanic have not been extended such benefits so far. Aggrieved with discriminatory attitude of respondents, the claimant/petitioner raised several demands for which demand notice was issued on 1-6-2010 *vide* which they had highlighted its grievances *qua* non-payment of wages as per Minimum Wages Act, 1948 to its Drivers, Conductors and Mechanic under H.P. Public Motor Transport Minimum Wages Act, 1948, payment of minimum wages to drivers and conductors under Minimum Wages Act, 1948 from date of their initial appointment. Thus, all the Drivers, Conductors and Mechanic working with respondent No. 2 have claimed to be entitled to minimum wages under H.P. Public Motor Transport Minimum Wages Act, 1948 from their initial date of appointment and such demands had been raised in the charter of demand *vide* demands 1 to 3. In the same demand notice, union/petitioner had demanded benefits of Employees Provident Fund to those employees whose names had been mentioned in Annexure P1 under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 from date of their initial appointment. Further alleged that respondent No. 2 had its own EPF Code No. 442 besides DAV Managing Committee, respondent No. 1 has its own trust which had also code No. DL/6528. Thus, the demand No.4 highlights for extending benefits of EPF to employees mentioned in Annexure P1 from their initial date of engagement. Another demand No.5 raised *vide* demand notice dated 1.6.2010 relates to regularization of service of drivers, Conductors and Mechanic whose names had been mentioned in Annexure P1 were entitled to be paid regular pay scales along-with arrears from the date of their initial appointment in parity with teaching and non-teaching staff. It is alleged that respondent No.2 had appointed Drivers and Conductors on their several buses since 1989 but they had not been given regular pay scales from initial date of appointments. As per 6<sup>th</sup> pay commission, pay scale of drivers and conductors had been fixed Rs. 4440-7440/- with grade pay of Rs.1300/- from initial date of appointment and other allowances as applicable to Class-IV and the copy of pay scales has also been annexed with claim petition as Annexure P2. 6<sup>th</sup> demand raised in demand notice dated 1-6-2010 relates to payment of bonus under the Payment of Bonus Act, 1965 but employees whose names are mentioned in Annexure P1 were eligible for bonus as respondent is profitable institution which is charging admission fee, tuition fee and transport charges from 1<sup>st</sup> standard to 12<sup>th</sup> standard and such admission charges and transport charges received after 1-4-2012 had been shown in Annexures P3 and P4. Lastly, the union/petitioner raised seventh demand which relates to minimum increment of Rs.500/- per annum to all employees of union. Accordingly, claimant/petitioner has prayed seeking direction to respondents to implement its demands raised by union in demand notice dated 1-6-2010 with direction to respondents to pay arrears and other consequential benefits from date of their initial appointment till date along-with interest @12% per annum and any other relief, union/petitioner is found entitled in the interest of justice.



4. Respondent No. 2 contested claim petition, filed reply *inter-alia* taken preliminary objection of jurisdiction, suppression of material facts. On merits claimed that DAV Public School Ambota, District Una, (HP) is self financed school which carries out activities to provide school education to the children on low charges of adjoining area where no quality education was available. Admitted that respondent No. 2 had followed guidelines framed by respondent No.1 besides respondent No.2 had its own fee structure dependent upon local factors like capacity of students, salary paid to teachers, other expenditures etc. Asserted that respondent No. 2 had been working on no profit and no loss basis and the funds available were being spent on infrastructure, salary & wages and day to day activities besides available funds being utilized for payment to salaries to teachers & other staff in such manner that they were paid atleast minimum wages fixed for various categories of employees by the H.P. Govt. from time to time. It is alleged that respondent No.1 had fixed educational qualification for all the categories of teaching and non-teaching staff which was being followed by respondent No. 2 but there were certain exceptions when some part-time workers were engaged/appointed on compassionate ground, locally accessible employees, land donors for respondent No. 2. In so far as demand notice dated 1-6-2010 is concerned, it is asserted that respondent No.1 was regularizing services of staff *i.e.* non-teaching, turn by turn after completion of 8 years of service and this fact is evident from appointment order(s) dated 17-8-2012 *vide* which service of Kuldeep Singh, Atma Singh, Gurdial Singh drivers, Dharam Pal Conductor-*cum*-Cleaner, Rekha Rani Ayah and Sheela Devi Ayah were shown to have been regularized. It is asserted that minimum wages were paid *w.e.f.* April, 2010 to its Drivers, Conductors and Ayas however Kuljeet Singh, Atma Singh, Gurdial Singh and Dharam Pal had been dismissed from union as per annexure of demand notice issued by HP Private School Avam Karamchari Sangh Palampur. With regard to employees provident fund, it is alleged that the same from Drivers, Conductors, Mechanic as shown in Annexure P1 was being deducted from date of appointment as per rules however cause of action is denied and claim petition is sought to be dismissed. Reply is supported with separate affidavit.

5. It is pertinent to mention here that in pursuance to filing written arguments by the parties, it was revealed that Miss Seema Sharma, Advocate representing respondent No. 2 had no authority to appear on behalf of respondent No. 1 who has now filed power of attorney *i.e.* vakalatnama on 29-12-2017 *vide* which she had been authorized by the Secretary of respondent no.1 to conduct case on its behalf before this court. Said Miss Sharma, Advocate has made statement before this court on 29-12-2017 that she had been authorized by respondent No. 1 to conduct the case as earlier inadvertently vakalatnama on behalf of respondent No. 1 could not be filed by her. She has *vide* statement dated 29-12-2017 also stated that she adopted reply filed by respondent No. 2 on behalf of respondent No. 1 besides adopted evidence led by respondent No. 2 on behalf of respondent No. 1. Similarly, she has also adopted written arguments filed on 11.9.2017 on behalf of respondent No. 1. Ld. Authorized Representative Shri N. L. Kaundal *vide* his separate statement on 29-12-2017 has stated that he has no objection in case power of attorney by respondent No. 1 in favour of Miss Seema Sharma, Advocate is allowed to be filed and placed on record. Thus, by filing of vakalatnama by Miss Seema Sharma, Advocate and her statement dated 29-12-2017 before this court, the entire evidence led by respondent No. 2 and pleadings and written arguments filed by her on behalf of respondent No. 2 shall now be read and treated as reply, evidence and written arguments on behalf of respondent No. 1.

6. The petitioner has filed rejoinder to written statement, reiterated its stand as maintained in the claim petition. It is asserted that DAV Managing Committee respondent No.1 has its own Service Rules and Bye-Laws which are applicable to all institutions including respondent No. 2 and that rules formulated by respondent No. 1 are applicable to all institutions including respondent No. 2 and that respondent No. 1 has also given all financial benefits of 6<sup>th</sup> pay commission to its employees and same has been given by respondent No. 2 to its teaching and non-teaching staff so far. It is also stated that respondent No. 2 has more than 10 buses



and transport department of respondent is covered under the Transport Motor Act, 1961 and that payment of bonus to its employees was applicable to employees as mentioned in Annexure P1 by respondent No. 2 under Section 8 of payment of bonus to its employee and under Section 10 or 11 of Payment of Bonus Act, 1965 from date of their initial appointment till date. Accordingly, reiterating its stand as maintained in the claim petition union/petitioner has prayed to pass an Award in favour of petitioner/union.

7. To prove its case, petitioner had examined PW1 Kewal Singh, General Secretary of petitioner/union tendered/proved affidavit under Order 18 Rule 4 CPC, Ex. PW1/A, copy of demand notice Ex. PW1/B, copy of certificate of registration Ex. PW1/C, copies of resolution Nos.15,17, 10, 11 Ex. PW1/D to PW1/G, copy of account manual Ex. P-A, copy of detail of transportation charges Ex. P-B, copy of admission charges Ex. P-C, copy of pay scales Ex. P-D, copy of letter dated 11-5-2004 Ex. P-E, copy of compromise/settlement EX. P-F and closed its evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Namit Sharma, Principal, DAV Senior Secondary Public School, Ambota, District Una, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of salary statement Ex. RW1/B, copy of Rajpatra Ex. RW1/C, copy of letter dated 17-8-2012 Ex. RW1/D, copy of LMC Meeting Ex. RW1/E, copy of affidavit of Sh. Kuljeet Singh Ex. RW1/F, copy of affidavit of Sh. Atma Singh Ex. RW1/G, copy of affidavit of Gurdial Singh Ex. RW1/H, copy of affidavit of Dharam Pal Ex. RW1/I, copy of affidavit of Sheela Devi Ex. RW1/J, copy of detail of P.F. Account for the year 2011-12 Ex. RW1/K, copy of detail of PF account for the year 2012-13 Ex. RW1/L, copy of letter November, 2013 Ex. RW1/M, copy of letter dated 22-11-2013 Ex. RW1/N, copies of employees provident funds Ex. RW1/O1 to O22, copy of certificate of DAV School Ambota Ex. RX, copy of declaration of revised budget estimate Ex. RY, copies of audit report/balance sheet 2013-14-15 Ex. RZ and closed evidence. As stated above in para No.5 respondent No.1 has adopted pleadings & evidence led by respondent No. 2 which shall be bound by the same.

8. I have heard the Authorized Representative representing petitioner gone through written arguments filed by party and Id. Counsel for the respondent Nos.1 and 2, gone through written arguments filed by party records of the case carefully relevant for issues framed so as to answer reference received from appropriate govt.

9. From the contentions raised, following issues were framed on 21.5.2013 for determination:

1. Whether the demands raised by the petitioner through demand notice dated 01-6-2010 are legal and justified as alleged? . . .*OPP.*
2. Whether this Court has no jurisdiction to hear and decide the matter? . . .*OPR.*
3. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? . . .*OPR.*
4. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No.1* : Partly yes, partly no

*Issue No.2* : No



*Issue No.3* : No

*Relief* : Claim petition is partly allowed per operative part of the Award.

### REASONS FOR FINDINGS

*Issue No. 1 :*

11. At the outset, it is apt to mention here that out of seven demands raised by union/petitioner as reflected in demand notice dated 1-6-2010 Ex. PW1/B, four demands *i.e.* 1 to 3 and 7 had not been pressed by Id. Authorized Representative for the claimant/petitioner as is evident from his statement dated 22-12-2017 recorded before this court and as such demands No. 1 to 3 and 7 are dismissed as unpressed.

12. Before advertng to the merits of remaining demands as stipulated in demand notice Ex. PW1/B, it would be pertinent to mention here that respondents have neither in reply nor in evidence have repudiated claim of petitioner that employees mentioned in Ex. P1 were not the Drivers, conductors and Mechanic of respondent No. 2. Similarly, year(s) of joining of eight drivers, seven conductors and one mechanic as shown in Ex. P1 too has not been disputed. Moreover, RW1 Shri Namit Sharma, Principal working with respondent No. 2 when examined before this court in cross-examination has shown his inability to tell if Annexure P1 annexed with demand notice Ex. PW1/B correctly revealed date(s) of joining of drivers & other employees mentioned in it. Being the Head of institution of respondent No. 2, (RW1) deposing also on behalf of respondent No. 1 was not absolved from his accountability to reveal true facts *qua* Ex. P1 being correct or not and by not specifically disputing the names of drivers and their respective year(s) of joining and giving evasive reply as stated above this court is left with no option but to hold that Annexure P1 correctly revealed the names of eight drivers, seven conductors, one mechanic and their respective year(s) of joining. Be it stated that Ex. PW1/A affidavit of Union/petitioner through its General Secretary (PW1) Kewal Singh excludes names of three drivers namely Atma Singh, Gurdial & Dharampal and one conductor namely Kuljeet who had been expelled from union. As such, these four members are not at all entitled for any relief in this reference petition. In the backdrop of foregoing admitted facts on record, evidence adduced by parties needs to be minutely scrutinized to determine rights of union/petitioner *qua* demands No. 4, 5 and 6 shown in demand notice Ex. PW1/B.

13. In so far as demand No. 4 is concerned, claimant/union has demanded to extend benefit of EPF to drivers, conductors and mechanic as reflected in Ex. P1 excluding four employees above-named. Although usually deduction for EPF was being made from salary of employees from date of initial engagement and the same amount was contributed by respondent No. 2 in EPF A/c of workmen concerned but now *vide* demand No. 4, union has demanded that employees of Annexure P1 whose EPF was not being deducted was required to be deducted from their initial date of engagement and even the share of employees which was being deducted from salaries be now deposited by respondent No. 2 in addition to its own contribution to EPF. Demand No. 5 pertains to regularization of drivers, conductors and mechanic under DAV Service Rules Manual and fixation of regular pay scale along-with arrears as was being paid to teaching and clerical staff from date of appointment excluding four officials above-named. Demand No. 6 is *qua* payment of bonus under Payment of Bonus Act, 1965 to drivers, conductors and mechanic as mentioned in Ex. P1 by respondent No. 2 excluding union officials as stated above as respondent fell within the definition of commercial establishment or say profitable institution.

*Demand No.4 :*

14. In order to establish its claim *qua* benefit of Employees Provident Fund (EPF) to workmen as mentioned in Annexure P1 attached with demand notice Ex. PW1/B. (PW1) Kewal



Singh, Secretary, Himachal Pradesh Private School Karamchari Sangh Unit DAV Ambota, District Una had been examined who has sworn in affidavit Ex. PW1/A, reiterated stand as maintained in claim petition qua demand No. 4 excluding four union officials above-named who have since been expelled from union. It has been categorically stipulated in affidavit Ex. PW1/A that demand No. 4 has been raised to extend the benefit of contribution to employee's provident fund to its member under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter called Act for brevity) from their initial date of engagement which necessarily follow union members of petitioner/union were not given benefit from initial date of engagement. Said witness has also proved demand notice Ex. PW1/B and that the claimant/union is registered with Registrar Trade Union HP who had issued certificate Ex. PW1/C in favour of claimant/petitioner. In cross-examination of RW1 Shri Namit Sharma, Principal DAV School Ambota, it has been asked by Id. Authorized Representative for the petitioner that workmen of respondent No. 2 were not given benefit from date of joining and this fact has been specifically denied by RW1 which goes to show that respondent No. 2 accepted correctness of entitlement of deductions of EPF from date of joining of workmen including workmen *i.e.* drivers, conductors and mechanic as shown in Annexure P1. It may be pertinent to mention here that demand No. 4 although stipulates payment of contribution to EPF being deducted from salaries of union members but not from initial date of engagement of these worker and equal contribution deposited in account of workmen by management however now demand No. 4 also relates to contribution of employee as well as of employer by respondent No. 2 but no question for both the contributions *i.e.* of union members & management to be borne by respondent No. 2 was asked to RW1 which necessarily follows that the union/petitioner even after raising demand No. 4 did not press upon the payment of both the contributions by the respondent No. 2 alone as stated above. In so far as benefit of EPF being extended to union members is concerned, this can also be assessed from various EPF forms and nomination forms Ex. RW1/O1 to O22 on record filed by respondents disclosing names of workmen and their date of joining. Be it stated that these are forms of Sunil Kumar, Driver (28-1-2004), Sucha Singh, conductor (28-1-2004), Pushpinder Kumar, Driver (7-9-2005), Sanjay Kumar, Conductor (22-8-2005), Raj Kumar, Mechanic (2-4-2008), Sunder Singh, Driver (7-4-2008), Vipin Kumar, Conductor (2-4-2009), Kishori Lal, Driver (17-8-2009), Arbind Kumar, Driver (17-8-2009), Vijay Kumar, Driver (17-8-2009), Swaran Singh, Conductor (17-8-2009), although respondents had brought on record various EPF forms having been filled alongwith nomination but it is uncertain from evidence adduced by respondents if this benefit had been extended to workmen as shown in these forms above stated from date of joining or from date of filling up Ex. RW1/O1 to O22 much after their appointments or thereafter. Be it stated that driver Sunil Kumar is shown to have joined service with respondent No. 2 in the year 2003 as per Annexure P1 annexed with demand notice Ex. PW1/B but form in question had been got filled by respondent No. 2 for that official on 28-1-2004. Similarly, Sucha Singh figuring in list of conductors at serial No. 3 is shown to have joined in the year 2003 whereas his EPF form along-with nomination form had been filled on 28-1-2004. Sanjay Kumar, conductor is shown to have joined in the year 2005 but his form has been got filled in 2006. As such, from documentary evidence adduced by respondents as stated above an uncertainty has arisen if the benefit of EPF had been actually extended to these drivers, conductors and mechanic as reflected in Annexure P1 when they had initially joined particularly when respondent No. 2 through its Principal (RW1) in cross-examination has not specifically disputed correctness of their respective year(s) of joining of service but at the same time, he has denied that workmen had not been extended benefit of EPF immediately on joining service meaning thereby that RW1 was admitting claim of PW1 in totality which relates to benefit of EPF from date of joining in service to union members who are employees as reflected in Annexure P1. Thus, testimony of RW1 is certainly not inconsonance with several EPF/ nomination forms as referred to above of workmen namely Sunil Kumar, driver, Sucha Singh and Sanjay Kumar conductors. Even in reply to para No. 4 respondent No. 2 has taken stand that EPF was deducted from date of joining as per rules and as such, it was necessary for the



respondent to have specifically established specific date of joining of these conductors, drivers and mechanic as reflected in Annexure P1 was the date since when these workmen were given benefit from date of initial engagement. That being so, it cannot be stated that respondent No. 2 was actually deducting EPF from date of joining workmen shown in Ex. P1 as discussed in foregoing para.

15. Ld. Counsel for respondents has vehemently contended that PW1 Kewal Singh, Secretary was a dismissed employee of respondent No. 2 who is no more in service of respondents and having ceased to be employee of respondent No. 2, he could not be member of union as well and this plea had also been taken in written argument that being dismissed from service of respondent, PW1 could not have deposed before this court *qua* claim of Union/petitioner and whatever he has deposed could not be read in evidence against respondents. Suffice would be to state here that claimant/petitioner is a registered trade union as reflected in Certificate Ex. PW1/C issued by Registrar Trade Union under the Trade Union Act which had held its several meetings with respondent No. 2 through its elected office bearers prior to raising demand notice dated 1-6-2010. It may not be erroneous to refer to resolution No. 15 dated 30-7-2012 Ex. PW1/D *vide* which Gurdial Singh driver and Dharam Pal conductor had been expelled from union and thereafter *vide* resolution No. 17 dated 16-9-2012 Ex. PW1/E name of Atam Singh driver who was President of union and Kuljeet Singh driver were also expelled by the full house of workers union. Ex. PW1/F is a resolution No.10 dated 18-6-2013 showing meeting of union had been held under Chairmanship of Sunil Kumar, President who had appointed (PW1) Shri Kewal Singh as General Secretary. Similarly, *vide* resolution No. 11 dated 14-7-2013 Ex. PW1/G said Kewal Singh had been authorized to lead evidence on behalf of the claimant/union. Thus, despite being dismissed employee of respondent No. 2, said Kewal Singh was elected office bearer of union/claimant elected as General Secretary by the full house of union unanimously as is evident from contents of resolution No. 10 dated 18.6.2013 Ex. PW1/F. Therefore, I see no substance in the arguments of Id. Counsel for the respondents that being dismissed employee of the respondent No.2, said Kewal Singh (PW1) could not have conducted this case on behalf of the petitioner/union. Be it stated that earlier claim petition was filed by President Atam Singh on 13-8-2012 who was expelled *vide* resolution No.17 Ex. PW1/K but after removal of Atam Singh, no adverse inference could be drawn against the petitioner/union which was duly registered union represented through Shri Kewal Singh its General Secretary in this court as which could be represented by any office bearer including PW1 Kewal Singh. In view of the above said discussion, it is held that Kewal Singh who had filed affidavit Ex. PW1/A on behalf of the claimant/union was competent to make statement *qua* the claim and he could also continue to conduct the case in every hearing before this court on the basis of resolution No. 11 dated 14-7-2013 Ex. PW1/G and thus there is no illegality in union/petitioner to have authorized its General Secretary Shri Kewal Singh to conduct present case on behalf of union/petitioner or it could not be stated that said PW1 Kewal Singh does not have any *locus standi* to pursue the present claim petition.

16. In so far as claim of the union *qua* employees provident fund for deduction of EPF from date of joining is concerned, nothing reliable has been led in evidence by respondents which could establish that immediately on joining of workmen including workmen mentioned in Annexure P1 their EPF was being deducted. It is in evidence that respondent deducted 12% EPF from workmen including drivers, conductors and mechanic and equal share was being deposited in the account which is also in conformity of DAV College Trust & Management Society Employees Provident Fund Rules but in so far claim of the union that both the contribution be deposited by respondent No. 2, the same is certainly not permissible either under The Employment Provident Funds Scheme, 1952 or the relevant 'Act'. However, respondent No. 2 is held liable to deduct EPF of workmen as mentioned in Annexure P1 from date of joining and as such after verification of actual date of joining, EPF is required to be deducted which had not so



far been in this case by respondents. Accordingly, demand No.4 is partly allowed holding that workmen as mentioned in Annexure P1 excluding four union members as mentioned in foregoing para are entitled for benefit of deduction of EPF from date of joining which has not been proved by any reliable evidence by respondents more particularly as shown Ex. RW1/O1 to O22 which did show deductions of EPF contribution from date of joining as year of joining was much earlier to filling of forms as stated above. However, remaining part of demand for contribution i.e. workmen's contribution to be paid by respondent No. 2 merits rejection as there is no specific provisions under the 'Act' for depositing of contribution of EPF i.e. of workmen as well as of management by respondent No. 2 alone. The claim of union *qua* Employees Provident Fund (EPF) is accordingly decided partly in favour of union/petitioner as stated above.

*Demand No.5 :*

17. To prove its case *qua* regularization of drivers, conductors and mechanic of respondent No. 2 besides fixation of pay scales as was being paid to teaching and non-teaching staff from the date of appointment, union/petitioner has examined PW1 Kewal Singh, General Secretary of the union who has deposed on oath as maintained in claim petition that demand No. 5 has been raised by union *qua* regularization of its members whose names have been mentioned in Annexure P1 demand notice Ex. PW1/B as per Service Rules of DAV Managing Committee and pay regular scale as fixed by Managing Committee which fell in class-IV category. He has specifically deposed on oath that drivers, conductors, cleaner and mechanic fell in Class-IV category from the date of initial engagement as fixed by DAV Managing Committee from time to time and also to pay arrears from their respective date of engagement. Affidavit Ex. PW1/A filed by PW1 clearly stipulates that Gurdial Singh, Atam Singh, Kuljit Singh drivers and Dharam Pal conductor have been expelled from membership of union for whom no relief was sought irrespective to the facts their names existed in Annexure P1 to demand notice of petitioner/union referred to above.

18. Before proceedings further, it would be apt to mention here that from evidence on record led by respondents, it is evident that factually there is no regularization policy of respondents more specifically from testimony of RW1 Shri Namit Sharma, Principal of school who disclosed in cross-examination that every school has its own regularization policy as these are self financed but failed to produce any regularization policy, however, on the point of regularization of policy of respondent No.2, it has been stated in cross-examination by RW1 that Local Managing Committee (LMC) of respondent No. 2 decided to regularize service of teaching staff after five years and non-teaching staff after eight years provided their act and conduct was found satisfactory. Not only this, RW1 has also maintained in cross-examination that financial viability is also to be seen by the respondents while considering regularization of its employees and as such this court is left with no option but to hold that there existed no definite policy *qua* regularization except LMC of DAV Ambota School respondent No.2 which in its minutes dated 23-3-2012 Ex. RW1/E has dealt under Serial No. 5 of proceedings to regularize services of class-IV employees (non-teaching staff) who had rendered 10 years of service. Therefore, in absence of any specific policy of respondent No. 2 *qua* regularization of Class-IV employees as stated above which is admittedly under control of respondent No.1 as disclosed by (RW1) Shri Namit Sharma, it was only LMC of respondent No. 2 which decided fate of class-IV employees. Be it stated here that respondent No. 2 as well as other DAV schools were working under control of respondent No. 1 as disclosed by RW1 in cross-examination. Thus, respondent No.1 as well as respondent No. 2 have failed to produce any specific regularization policy *qua* non-teaching staff and that regularization of employees of respondent No. 2 was being done on recommendation of LMC Ambota and approved by respondent No.1. Thus, in such like situation, it would be unsafe to hold that there existed any regularization policy *qua* class-IV employees i.e. drivers, conductors & mechanic irrespective of the fact that there is evidence to the effect



that whatever was being recommended by LMC of respondent No. 2, was factually approved by respondent No.1.

19. Perusal of Clause 5 of Ex. RW1/E the minutes of LMC of respondent No. 2 showed that it had unanimously resolved and recommended to regularize services of class-IV employees (drivers, conductors and Aaga) who had worked continuously for more than 10 years in school. It further stipulated that with the unanimous decision of committee, it had recommended to regularize service of class-IV employees aforesaid irrespective of their inadequate qualification during their appointment on the said post *w.e.f.* 1-4-2012 subject to withdrawal of the labour court case and medical fitness of class-IV employees concerned. It is further revealed from the proceedings under Clause 5 of Ex. RW1/E that services of S/Shri Kuljeet Singh, Atma Singh, Gurdial Singh (drivers) and Dharam Pal (conductor) who were expelled by union had been recommended for regularization as they had joined services in the year 2001. Be it stated that it was also mentioned on the date of recommendations, these officials had completed 11 years of service in the year 2012. Be it stated that Ex. RW1/F to Ex. RW1/J are the affidavits of drivers Kuljeet Singh, Atma Singh and Gurdial Singh respectively and Ex. RW1/I is the affidavit of conductor Dharampal Singh in pursuance to which these class-IV employees had been regularized and union/petitioner had specifically prayed to exclude the names of drivers and conductor for relief *qua* regularization and other aspect highlighted in demand No. 5 was sought. It is also pertinent to mention here that service of driver Sunil Kumar had been regularized as is evident from Ex. RW1/M letter dated November, 2013 of respondent No. 1 addressed to respondent No. 2 in which said official had been given pay scale of Rs.5200-20200+G.P. Rs.1800/- but said Sunil Kumar class-IV official has refused to join on regular post. It is also pertinent to mention here that vide letter dated November, 2013 Ex. RW1/M issued by DAV Managing Committee, New Delhi addressed to Officiating Incharge, DAV Sr. Sec. School, Ambota, Distt. Una had approved proceedings of meetings of *Adhoc* Selection Committee dated 14-4-2013 in which Sunil Kumar was shown to be working as driver and had approved to give pay scale of Rs.5200-20200+ G.P. Rs.1800/-.

20. The solitary question which crops up for determination is that if LMC of respondent No. 2 in absence of specific policy of regularization to decide that non-teaching staff *i.e.* drivers, conductor & mechanic to be regularized after 10 years of service as mentioned in proceedings Ex. RW1/M of Local Management Committee as referred to above certainly contradicted with version of RW1 Shri Namit Sharma who revealed in cross-examination that LMC of respondent No. 2 had decided to regularize service of teaching staff after four years and non-teaching staff after 8 years. It is absolutely uncertain from evidence of respondents if service of non-teaching staff as stated was to be factually regularized after 8 years of service from initial date of appointment as mentioned in the proceeding of the LMC Ambota Ex. RW1/E and as revealed by RW1 Shri Namit Sharma the Principal of School of respondent No. 2 but most important aspect in this case is that under Clause 4 of the proceedings of LMC Ambota Ex. RW1/E eligibility criteria for regularization of teaching staff as stated above was after completion of continuous service of 4 years and for non-teaching staff for 8 years subject to financial viability of school and good conduct and behaviour of the employee. It is uncertain from the proceedings of the LMC of respondent No. 2 if eligibility criteria was 8 years for regularization for non-teaching staff then why the class-IV employees such drivers, conductors were not regularized for 10 years as mentioned Clause 5 which goes to show that despite eligibility of class-IV employees of union members on completion of 8 years, they were not considered for 10 years for regularization by the respondents. Factually several drivers and conductors and one mechanic as shown in Annexure P1 had rendered more than 8 years of service but they were not regularized and for no valid reasons decision was taken to regularize services of these Class-IV employees after 10 years of service as reflected in Ex. RW1/E the minutes of Managing Committee Ambota. Ld. Authorized Representative of petitioner has



vehemently contended that respondents are adopting pick and choose formula for regularization and there is no uniformity rather respondents are recouring to unfair labour practice as has come in evidence. It can be seen from evidence on record that three drivers as stated above were regularized who were expelled by Union/petitioner.

21. Ld. Authorized Representative has placed reliance upon appointment of one Avinash, Accountant (non-teaching) staff working with respondent No. 2 as is evident from appointment letter Ex. PE dated 11-5-2004 and evidence on record which showed that this official was appointed in 2004 on probation for one year but was regularized after 2 years but when this question was asked to RW1 Shri Namit Sharma the Principal has shown his inability to tell claiming that he was not aware after how much period the said Avinash, Accountant was regularized however stated on oath that said non-teaching staff Avinash had been regularized before LMC resolution Ex. RW1/E dated 23-3-2012. It may be stated here that said Shri Namit Sharma (RW1) has given evasive reply which was not expected of him as he himself is one of the respondents and party to reference so received from govt. Significantly, while stating so, RW1 Shri Namit Sharma had forgotten that Avinash had joined in 2004 whereas the meeting was held in 2012 as stated above which also show that Shri Namit Sharma was not correctly deposing period after which said Avinash, Accountant was regularized and as such even if the regularization had taken place prior to resolution No. 35 of LMC dated 23-3-2012 as stated above, there was certainly no regularization policy as this official had been regularized in 2 years whereas for other non-teaching staff regularization per minutes of LMC was after 8 years of service. In such like situation, it would be unsafe to hold that the management of respondents had any fair and uniform regularization policy for regularization for non-teaching staff in particular for officials shown in Annexure P1.

22. Ld. Authorized Representative for petitioner/union has relied upon judgment of Hon'ble Apex Court titled as Umrula Gram Panchayat Vs. The Secretary, Municipal Employees, Union & Ors. reported in 2015 LLR 449 SC in which the Hon'ble Apex Court has held that paying less wages and other benefits to daily wagers in comparison to permanent employees is practicing unfair labour practice as defined under the Industrial Disputes Act, 1947 which was prohibited under Section 25(T) of the Act amounting to statutory offence under section 25(U) of the Act since the same violated principle of 'equal work, equal pay' i.e. exploitation of workmen which is not permissible under law. It was further held that it was appropriate to treat service of the daily wagers as permanent after 5 years of initial appointment if the work being performed by the daily wagers was same as that of permanent workmen and working hours were same. The Hon'ble Apex Court has categorically held that regularization of daily wagers after completion of 5 years continuous service was justified. The relevant paras of the judgment are produced below for reference:

“Regularization. Daily-wagers- When justified. Workmen had completed services from 5 years to 18 years as daily-wagers as Safai Kamdars. They were not being paid wages, allowances and other benefits equal to permanent Safai Kamdars. Workmen raised an Industrial dispute for their regularization. Conciliation process ended in failure. Labour Court directed the Management to pay wages, allowances and benefits to the workmen for which they are legally entitled. Management challenged the Award by filing writ petition which was dismissed by the learned Single Judge. Writ appeal filed by the Management did not succeed. Management filed appeal in Supreme Court. Held, work being performed by the workmen was same as that of permanent workmen, working hours were same. Discrepancy in wages of permanent and non-permanent workmen is alarming. Work being performed by the workmen is of permanent nature. There is no restriction for recruitment of workmen as daily-wagers. Management of Panchayat would have no difficulty to bear the extra cost towards wages and other benefits since



there are no financial unsoundness with the Management. Hence, it is appropriate to treat the services of the daily wagers as permanent after 5 years of their initial appointment till their age of superannuation. Workmen be paid regular pay-scale as per revised pay-scale. Appeal is disposed of accordingly”.

[Paras 10 to 12 and 17 to 19]

23. Ld. Authorized Representative for petitioner has further placed reliance upon judgment of Hon'ble High Court of Karnataka reported in [2015 (144) FLR 925] titled as Management of National Aerospace Laboratories and Engineering and General Workers Union, No. 2 and another, the relevant paras of the judgment are produced below for reference:

“Regularization. Petitioner a constituent unit of the Council of Scientific and Industrial Research (CSIR) registered under Societies Registration Act, 1860. Regular employees of petitioner governed by pay scales and other service conditions of CSIR. Another category of contract employees employed to work in different projects but with meager salary and without security of service. Claim of petitioner that pursuant to contract with respondent No. 2 for supply of additional manpower, workmen in question were employed by petitioner in technical posts. Respondent No. 2 supported the petitioner. Petitioner an organization predominantly involved in research and development. Finding of the Tribunal that it falls within definition of industry under section 2(j) of the Industrial Disputes Act, 1947 upheld. Finding recorded by the Tribunal workmen worked alongside regular workmen and their supervision was done by petitioner itself. Tribunal rightly held that workmen were actually working for the petitioner and contracts were mere façade artificially created by the petitioner. Workmen concerned in fact employed for nearly a decade or even more with object of not making appointments in legal manner without conferring them status and privileges of regular workmen. Amounts to unfair labour practice. Interference with the impugned award directing petitioner to regularize their services declined. Petition dismissed with consequential additional directions that the workmen shall be treated at par with regular employees. Arrears due to workmen directed to be paid with interest @ 9% p.a.....”

24. Ld. Authorized Representative for petitioner has further placed reliance upon judgment of ONGC Ltd. and Petroleum Coal Labour Union and others reported in [2015 (146) FLR 443], the relevant para of the judgment are produced below for reference:

“Industrial Disputes Act, 1947. Sections 2(ra), 2(k), 25-T, 25-U, 18 (1) and 33 (i) (a). Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Industrial dispute. Award by Tribunal. Workmen were appointed on term basis, who continued their services for several years. And during perennial nature of work. They were denied their legitimate right to be regularized in permanent posts of corporation. Same attracts Entry No.10 of Sch. V of Act. A clear case of an unfair labour practice. And even in absence of plea of an act of unfair labour practice. Labour Court/High Court have got power to record finding on basis of record and adjudicate. Commission of an unfair labour practice in relation to concerned workmen by corporation is *ex facie* clear. Hence the judgments of Courts below in favour of concerned workmen are legal and valid. Award of Tribunal rightly affirmed by High Court. No interference required in the award by Tribunal, judgment and orders of both the learned Single Judge and Division Bench”.

[Para 40]

A bare glance at the aforesaid judgments would show that the regularization of non-teaching employees of respondent No. 2 after serving number of years invaded their legitimate rights. In Umralla Gram Panchayat's case (supra), the Hon'ble Apex Court had held that



regularization of daily wagers after completion of 5 years continuous service from initial date of appointment was justified. Similarly, the Hon'ble Karnataka High Court has held in judgment (*supra*) that workmen concerned who remained employed for nearly a decade or even more with object of not making appointments in legal manner without conferring status and privileges of regular workmen, amounted to unfair labour practice. In the judgment of Hon'ble High Court of Karnataka regular employees were governed by pay scales and other service conditions of CSIR and the petitioner before the Hon'ble High Court was organization predominantly involved in research and development which fell in definition of industry under Section 2(j) of the Industrial Disputes Act, 1947. On the other hand, Id. Counsel for the respondents has contended with vehemence that school as an institution is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act as referred to above.

25. Id. Authorized Representative for petitioner on the other hand has referred to judgment of Hon'ble Apex Court titled as Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548 in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Industrial Disputes Act, 1947. By analogy and findings of the Hon'ble Apex Court in aforesaid judgments schools as an "institution" would be falling in the definition of industry and its employee are the workmen who were entitled for protection of Industrial Disputes Act and at the same time, members of claimant/union would also be entitled to be regularized as per the regularization policy if any and in the absence of same, they would be entitled to be regularized after 5 years from date of initial appointment as has been held by Hon'ble Apex Court in Umrula Gram Panchayat's case (*supra*). Be it stated that respondents fell under the definition of registered society which would be governed by provisions of Societies Act, 1860 and its employees *i.e.* Drivers, conductor & mechanic mentioned in Annexure P1 are liable to be regularized after 5 years of service from their date of initial appointment.

26. Apart from this, Id. Authorized Representative has taken the plea that Ex. PD Annexure-A Flowchart depicted pay band and grade pay for various posts including class-IV employees under 6<sup>th</sup> Pay Commission. It has been pointed that in this document 6<sup>th</sup> Pay Commission Sub-Committee in its meeting held on 5.5.2010 and 10.9.2010 *vide* item No. 5 had decided feasibility of grant of pay band of Rs. 5200-20200 plus grade pay of Rs. 1800/- to category D employees who was secondary pass and also to those who are required to be retained as per recommendations of the 6<sup>th</sup> Pay Commission was being separately under the consideration. It was categorically observed in note to Ex. PD that all the Category D employees even if they were secondary pass will be granted pay band of Rs.4440-7440 plus grade pay of Rs.1300/1400 and not Rs.5200-20200 with GP of Rs.1800/- under class-IV categories of peon, driver, watchman, peon-*cum*-driver, Chowkidar, conductor, generator operator, lab attendant in class-IV categories. It was clearly mentioned that if the scales were financially viable to school, then Rs. 4440-7440 plus GP of Rs.1400/- was payable and where school is not financially viable, the same category would be paid scales of Rs. 4440-7440/- plus GP of Rs. 1300/- which goes to show that where there existed financial viability GP of Rs. 1400 could be paid. Otherwise, if there was no financial viability, GP of only 1300/- was to be paid. It may be stated here that after meeting dated 5-5-2010 and 10-9-2010, respondent No. 2 *vide* its meeting Ex. RW1/E dated 23-2-2012 decided to regularize service of employees who had rendered service of more than 10 years. In its Clause 5 of the minutes aforesaid, there is no stipulation of non-financial viability and as such inference which could be drawn is even after going through chart Ex. PD, respondent No. 2 had unanimously decided after financial viability to regularize officials *i.e.* class-IV employees who had completed 10 years of service. Id. AR for the petitioner contended with vehemence that besides doing regularization in pick and choose manner, respondents have managed to get inconsistent affidavits from three drivers namely Kuljeet Singh, Atma Singh and Gurdial Singh and conductor Dharampal Singh who were shown to have



joined service in 2001 whereas Annexure P1 showed that Kuljeet Singh had joined in 1989 and Atma Singh in 1996 as discussed foregoing paras & that respondent No. 2 (RW1) failed to repudiate claim of union that these officials had not been appointed as per details in Annexure P1 which goes to show that Kuljeet Singh, Atma Singh had factually joined in 1989 and 1996 respectively but management could manage to get affidavits from these three drivers & one conductor to have initially joined in 2001 as mentioned in Ex. RW1/E *qua* withdrawal of case as stated-above and even got changed year(s) of joining of Kuljeet Singh and Atma Singh drivers in minutes of LMC Ambota respondent No. 2.

27. It would be apt to mention here that Atma Singh was the President of union who had signed present claim petition which necessarily follows that few officials who had rendered more service as shown in Annexure P1 and lesser years shown in minutes of Local Managing Committee of respondent No. 2 were persuaded to withdraw the court case as well as to file affidavits for thier regularization at the instance of management of respondent No. 2. Similarly, Dharam Pal Singh, conductor is shown to have joined in 2001 as per minutes of Local Managing Committee whereas he had per Annexure P1 he had joined in 1987. This further shows that management of respondent No. 2 could manage to reduce even the years for which these workmen actually worked as the respective year(s) of joining of these officials which was not specifically disputed by RW1 Shri Namit Sharma in his statement on oath as stated in foregoing paras of judgment besides affidavits for withdrawal of case by giving officials assurance for regularization and these officials despite having rendered service of 15 years in the year 2012 *i.e.* in year 1997 were shown to have been appointed in the year 2001 having rendered only 11 years of service. This clearly shows that management of respondent No. 2 had in planned manner resorted to unfair labour practice by obtaining affidavits from above named drivers *i.e.* Kuljeet Singh, Atma Singh, Gurdial Singh drivers and Dharampal Singh conductor who were earlier members of union/petitioner and decreased their number of years of service before regularization. In view of the foregoing discussion in particular case law referred to above, the class-IV employees of respondents *i.e.* drivers, conductor and mechanic except three drivers namely Kuljeet Singh, Atma Singh, Gurdial Singh and conductor Dharampal Singh are liable to be regularized by respondents after having rendered 5 years of continuous service from date of joining and thereafter are entitled to be placed in scale of Rs. 4440-7440 with grade pay of Rs.1400/- who are also further held entitled for arrears as stated above. Accordingly, it is held that all class-IV employees *i.e.* drivers, conductor and mechanic of union/petitioner except three drivers namely Kuljeet Singh, Atma Singh, Gurdial Singh and Dharampal Singh, conductor as stated above are to be regularized after 5 years of continuous service from their initial date of appointment with respondent No. 2 and thereafter would be given scales of 6<sup>th</sup> Pay Commission as reflected in Ex. PD *i.e.* scale of Rs. 4440-7440/- with grade pay of Rs. 1300/-.

*Demand No.6 :*

28. Ld. Authorized Representative for the petitioner has contended that every employee who is working in an establishment for not less then 30 working days in an accounting year and has not been subject to any disqualification for bonus envisaged under Section 9 of Payment of Bonus Act, 1965 is statutorily entitled to the minimum bonus. Ld. Authorized Representative for the claimant/union has emphasized that all the drivers, conductors and mechanic mentioned in Annexure P1 except those who have ceased to be members of the union more specifically detailed in affidavit Ex. PW1/A are entitled to seek bonus from respondents. Repudiating the arguments advanced by the Id. Authorized Representative for the petitioner/ union, Id. Counsel for the respondents has contended that respondent No. 2 is being run on 'no profit no loss basis' although it follows the rules made by DAV CMC respondent No. 1 but respondent No. 2 is managed by Local Managing Committee of DAV Ambota which looks after management internal as well as external affairs of the school. It further remains the case of the



respondent No. 2 that it is self financed institution, carries out its activities to provide schooling, education to children, salary of teaching and non-teaching staff, pay and allowances, medical facilities, pension, gratuity (regular employees) and provident fund from collection of fee received by respondent No. 2 from students which claims to have its own fee structure depending on local factors such as paying capacity of students and salaries paid to school teachers, other expenditures including administrative expenditure and thus Local Managing Committee, Ambota of respondent No. 2 has control over entire financial matters relating to school.

29. Ld. Counsel for respondents has relied upon Section 32 of the Payment of Bonus Act, 1965 which specifically under Sub Clause (v) (b) provides that employees employed with universities and other educational institutions are not to be paid bonus under the Payment of Bonus Act. I have heard the Ld. Authorized Representative for petitioner/union as well as Ld. Counsel for respondents on demand No. 6 concerning payment of bonus. It is relevant to mention here that in her written arguments filed by Ld. Counsel for the respondents on 11.9.2017 nothing has been stated about demand No. 6 whereas in para No. 8 of the written arguments has mentioned that respondent No. 2 had its own 12 buses, drivers, conductors on it were permanent in nature so respondents could not engage other on temporary basis or as daily wage or fixed rate basis against the permanent vacancies. In so far as claim of respondents that it was working on no profit no loss basis, it has been contended by petitioner that respondent No. 2 fell under the definition of commercial establishment as there exists several types of activities which included running of 12 buses providing bus service to the students studying in school at Ambota for which their parents were separately charged. Similarly, there were certain other commercial activities such as sale of uniforms, books, copies etc. by which respondent No. 2 had income. Such activities were not at all activities relating to educational institution but these are primarily commercial activities. It has also been contended that DAV Ambota respondent No. 2 has about 2000 students and even at the time of admissions high admission charges were being taken and thus it cannot be stated that a institution was not at all profitable institution. Moreover, respondent No. 2 had 11 buses and even service of full time mechanic were being taken & maintenance of buses aforesaid and as such transport department of respondent No. 2 would also be covered under Transport Motor Vehicle Act, 1961 as transport fell under the commercial establishment attracting applicability of payment of bonus under the Payment of Bonus Act, 1965. On that score, employees who performed duties of drivers, conductors and mechanic are entitled for bonus from earning from several buses run by respondent No. 2 relying upon judgment of Hon'ble Apex Court T.T. Devasthanam (AIR 1980 SC 604).

30. To appreciate rival contentions of the parties as stated above, it would be relevant to refer to certificate dated 20.10.2015 Ex. RX issued by respondent No. 2 which has been countersigned by the Manager and Vice Chairman (LMC) Ambota revealing that respondent No. 2 was self financed institution which did not receive any grant-in-aid from State Government or Central Government or from any other agency. At this stage it would be relevant to mention here that respondent have relied upon Ex. PY dated 19-4-2014 a declaration disclosing revised budget of 2013-14 having surplus amount of Rs.7,39,244/- and estimated budget of 2014-2015 had surplus Rs.67,919/-. Certificate of the Chartered Accountant Ex. RZ dated 14.6.2014 relied upon by the respondents revealed certification of balance sheet and surplus amount. Minute scrutiny of the respondents' documents would show that actually the respondent No. 2 has substantial income from various commercial activities although related to school and respondent No. 2 has sufficient profits as shown in balance sheet for the year 2013-2014 aforesaid and thus it cannot be stated that respondent No. 2 was being run on no profit no loss basis. It may not be erroneous to mention here that documentary evidence relied upon by respondents itself demolish plea of respondent No. 2 being run on no profit no loss basis. Similar matter came up before the Hon'ble Apex Court reported in AIR 1980 SC 604 titled as T. T. Devasthanam Vs. Management in which the government department had found difficult to run such projects departmentally &



it decided to create Board and transfer the project to ensure that there was proper service to the community at large and there was no pressure on the meager revenue and other resources of the State. The Hon'ble Apex Court has specifically held that the Tribunal had to decide whether transport department having regard to the features of administration, the sources of its finance, the balance sheet that being drawn up and the disposal of the profits can be considered to be an institution in itself whether it has nexus with the Devasthanam or not. Therefore, the fact that transport department was being run by Devasthanam does not keep it out of being an institution. It was held that if the transport department run by Devasthanam can be considered as an institution by itself, then it must be bound by the provision of Payment of Bonus Act. The relevant para is reproduced below for ready reference:

“The Tirumala Tirupati Devasthanam, a vast and unique religious organization in the country, is certainly not founded for making profit and attracts people who want to offer worship to Shri Venkateshwara but then the specific question with which we are concerned is whether the transport operation by the administration falls within the category of institutions within the meaning of section 32(v)(c). Is the transport department so merged in and integrated with the Devasthanam as to be incapable of independent identity. Is the transport industry run by the Devasthanam sufficiently spread as to be treated as an institution in itself? There is no doubt as the Tribunal has rightly held, that it is an industry but the further question arises whether it is an institution in the context and, within the text of the Payment of Bonus Act. This question has not been properly appreciated by the Tribunal, Secondly assuming that it is an institution, it does not necessarily follow that section 32 is excluded. On the other hand, there must be proof that the transport department (a) is an institution; and is established not for the purpose of the profit. The Tribunal has not correctly appreciated the import of this latter requirement. It has been found that profits made in some years are ploughed back whatever that may mean. It is also found that the motive for running the industry of transport was to afford special facilities for the pilgrims. These by themselves do not clinch the issue whether the institution has been established not for the purposes of profit, nor are we satisfied that merely because in the administrative report of the Devasthanam, there is mention of the transport establishment as remunerative enterprise; that is decisive of the issue....”

31. Reliance has further been placed on judgment of Christian Medical College and Hospital Vs. Presiding Officer, Industrial Tribunal reported in 2002 II-LLJ-462, in which question had cropped up for enforcement of Payment of Bonus Act, 1965 which exempts educational institution under Section 32(v) (c). Applying the dominant purpose test enunciated in Tirumala Tirupati Devasthanam (1980) case, it was held that even assuming that petitioner before 2002 case aforesaid has an educational institution as well as hospital a separate department, then the Act would be applicable to hospital and not to educational institution. It was also observed that Christian Medical College Vellore hospital was registered under Societies Registration Act, 1860 and said society of Christian Medical College as well as hospital is one of the institutions. Hospital is another institutional branch or department of society. Therefore, it was held relying upon Tirumala Tirupati Devasthanam, the hospital is an independent and separate department. Merely because the profits of the hospital are ploughed back, it does not cease to be a profit making body. Therefore, provisions of Section 32 (v) (c) are not attracted in the case in hand before this court. It was held that the Tribunal came to conclude that hospital was being run on profit and there was no reason to interfere with the financial institution. Therefore to the hospital, the exemption granted under sub section (c) of section 32 (v) and in so far as hospital is concerned, it is separate department by itself though in the case in hand before this Tribunal the dominant features of institution clearly remains to be that of a profit making establishment as has come in the evidence discussed in the foregoing



paras and the exemption envisaged under Section 32 (v) (c) would not be attracted. In case in hand before this court claim of drivers, conductors and mechanic who are union members are concerned they are part of a transport department with the school although under the control of respondent No. 2 and there is nothing in evidence to show that transport of buses was being run on "no profit no loss basis" rather balance sheet referred to above the respondent No. 2 is earning substantial profit is held to be ground for non-applicability of Section 32 (v) (c) of the Payment of Bonus Act, 1965. Be it noticed that there is no reliable evidence led by respondents which would establish that income derived from bus charges received from students did not yield any profit as details of total income and expenditure has not been proved on record. Similarly, evidence of respondents not receiving any aid from govt. or any other agency does not substantiate their claim of no profit no loss. Be it stated that cross-examination of RW1 reveals that employees were not being paid bonus who stated himself that school was non-profitable organization. It is pertinent to mention here that Id. Counsel has asked several material questions pertaining to motor workshop at the school of respondent. PW1 Kewal Singh has admitted that no motor workshop existed at school but claimed that one motor mechanic has been engaged who repaired several buses of school in the campus of school premises. He has specifically denied that mechanic only looked after day to day maintenance of buses of school and if bus was to undergo major repair, same was sent outside workshop however stated of his own that goods/components relating to the buses were being procured in school and buses were got repaired through mechanic of school in the ground of school campus. He has further stated that name of mechanic Raj Kumar who was also working as conductor and his name figures in Annexure P1. Thus, from the evidence on record, it is abundantly clear that respondent No. 2 did not pay bonus to union members who fell in category of Class-IV employees non-teaching and the claim of petitioner *qua* bonus relates to the union members only including those who have ceased to members of union/petitioner. Thus, applying the ratios of the judgments of the Hon'ble Apex Court referred to above despite being educational institution, the earning of the respondent No. 2 by running several buses for picking up and dropping students and charging substantially and there being no specific evidence led by respondents that buses were being run on no profit no loss basis clearly shows substantial income as well as profit to respondent No. 2 moreso when full time mechanic namely Raj Kumar has been engaged to repair buses and even major repair were being carried out after procuring components of the buses by which respondent No. 2 is deriving certainly substantial income as reflected in Ex. PB. Similarly Ex. PC admission charges pertaining to 2012-13 shows that substantial income was being received from new students at the time of admission and earlier old students as enumerated in Ex. PC books, note books and stationery was sold to students clearly establish that respondent No. 2 remains engaged in commercial activities besides educational and fell under the definition of commercial establishments applying judgment of T.T. Devasthanam v. Management (supra) relied upon by Id. Authorized Representative for petitioner/union.

32. Lastly, Id. Counsel for respondents contended that Labour Court is not competent to give relief of bonus to claimant/petitioner/union. It has been contended that only an Industrial Tribunal can pass an Award and not by Labour Court. Repudiating the arguments advanced by Id. counsel for respondents, Id. Authorized Representative for petitioner has placed reliance upon Section 1 (b) dealing with applicability of Payment of Bonus Act which requires that the 'Act' applies to establishment having strength of 20 more persons who are needed to have been employed in accounting year. Section 8 deals *qua* eligibility for bonus which provides every employee shall be entitled to paid bonus by his employer in an accounting year provided that employee has worked with the establishment for not less than 30 days in a year. Section 10 of Payment of Bonus Act provides that the minimum bonus to be 8.33% to be paid to workmen of such establishment. Id. Authorized Representative for petitioner/union on the other hand has relied upon judgment reported in 2008 LLR 765 titled as H.P. State Electricity Board and Anr. Vs. Ranjeet Singh and Ors., in which the Hon'ble Apex Court has clearly held that Labour



Court can decide only the matters specified in Second Schedule of the Industrial Disputes Act, whereas bonus appears at item No. 5 in the Third Schedule which is to be decided by the Industrial Tribunal. Thus, this court being an Industrial Tribunal as well as also competent to adjudicate controversy *qua* applicability of payment of bonus. Thus, I see no force in arguments advanced by Id. Counsel for respondents that this court cannot decide the controversy under the Payment of Bonus Act. In so far as applicability of the provisions of Payment of Bonus Act is concerned, it has been admitted by RW1 in cross-examination that there were about 100 employees working with respondent No. 2. As such when employees working with respondent No. 2 were more than 100, certainly the Payment of Bonus Act would be applicable and since the drivers, conductors and mechanic were claimants before this court who had been working for last several years, they would be eligible for bonus under Section 8 of the Payment of Bonus Act, 1965 particularly when they are not disqualified to receive bonus under Section 9 of the Payment of Bonus Act. Thus, in view of case law referred above and various provisions of Payment of Bonus Act, it is held that this court being an industrial tribunal also is competent to grant relief of bonus to drivers, conductors and mechanic as reflected in Annexure P1 to Ex. PW1/B and these all officials are held entitled for minimum bonus of 8.33% of their salary from their initial date of appointment. Thus, claim of union/petitioner with regard to demand No. 6 is held in favour of the claimant/petitioner as stated above. In view of foregoing discussions demands No. 1 to 3 and 7 are decided as unpressed however demands No. 4, 5 & 6 as stipulated in demand notice dated 1.6.2010 Ex. PW1/D are partly allowed as stated above. Issue No.1 is decided accordingly.

#### *Issue No. 2 :*

33. In so far as plea of jurisdiction raised by respondents is concerned, it is not certain under what provision of law jurisdiction of this court is barred but from written arguments and case law relied it seems jurisdiction of labour court to adjudicate relief under Payment of Bonus Act, 1965 has been raised. Suffice would be state here that dispute *qua* payment of bonus is to be decided by Industrial Tribunal and not by Labour Court as has been also discussed in foregoing paras. Needless to mention that this court exercises jurisdiction as Labour Court as well Industrial Tribunal and for said reason there is no force the objection of respondents with regard to this court having no jurisdiction to try and entertain this claim. Issue No. 2 is accordingly decided in negative in favour of petitioner/union and against respondents.

#### *Issue No. 3 :*

34. Ld. counsel for the respondents contended with vehemence that claimant/petitioner has suppressed material facts while issuing demand notice and filing claim petition before this court and reliance has been placed on settlement Ex. PF dated 17.10.2005 entered into between Smt. Madhu Sharma, General Secretary on behalf of H.P. Private School Shikshak Mazdoor Sangh and D.A.V. LMC Palampur and Manager D.A.V. Public School Palampur *vide* which dispute was amicably resolved *inter-se* parties and this fact was not revealed by union/petitioner while filing the present claim petition. The settlement Ex. PF entered into between parties revealed that workers namely Anil Kumar and Dharam Singh and other as listed in the list of workers shall be regularized in their respective pay scales as per D.A.V. C.M.C. New Delhi Services Rules framed for the purpose of Basic Pay + D.A. as applicable to other D.A.V. school and regularization of the workers shall be deemed to be effective from 1-4-2004. Ld. Authorized Representative for petitioner/union has contended with vehemence that Award dated 17-10-2005 on the basis of settlement dated 10.5.2005 was not acted upon but factually this settlement/compromise did not specifically relate to claim of drivers, conductors and mechanic as in case before this court and factually it related to issue of regularization only of certain workers at that time whereas in the case before this court, there are several other issues out of which issues relating to bonus, EPF regularization of petitioner/union have been raised.



Moreover, the Award Ex. PF in question is not an Award in-rem but Award in personam. That being so, it also remains case of the respondents that Award Ex. PF has not been acted upon and thus for aforesaid reasons, it cannot be stated that petitioner has suppressed material facts disentitling relief sought for vide demand notice. Moreover, even in reply filed by the respondent Nos. 1 and 2, it is absolutely uncertain as to how the claim petition is bad for suppression of material facts moreso when in written arguments filed by respondents in last page it is alleged that all the demands of petitioner/union have been complied. It is nowhere the case of respondents that they had specifically alleged suppression of facts qua Award dated 17.10.2005 due to which the union/petitioner were debarred from raising subsequent industrial dispute and consequently reference now so received from appropriate govt. In absence of the same, it would be unsafe to hold that claim petition is bad for suppression of material facts. This issue is decided in negative in favour of union/petitioner and against respondents.

*Relief :*

35. As sequel to my findings on foregoing issues, claim of petitioner/union pertaining to demands No. 1 to 3 and 7 are dismissed as un-pressed whereas demands No. 4, 5, & 6 as stipulated in demand notice dated 1.6.2010 Ex. PW1/D are partly allowed except with regard to drivers Kuljeet Singh, Atma Singh, Gurdial Singh and conductor Dharampal Singh. Accordingly, respondents are hereby directed to give benefit of EPF to union/petitioner as stated above from the date of their initial appointment. It is also ordered that respondents shall regularize non-teaching staff *i.e.* Drivers, Conductors and Mechanic as shown in Annexure P1 annexed with demand notice Ex. PW1/D after a period of 5 years from their initial appointment and thereafter to give them benefit of 6<sup>th</sup> Pay Commission as has been provided to its regular employees except workers who had been expelled from union as stated above. It is further ordered that after regularization of services of class-IV employees of union/petitioner they shall be placed in scale of Rs.4440-7440 plus G.P. Rs.1400/- and shall also be entitled to be paid arrears of new pay scales as stated above. It is further ordered that respondents shall pay minimum bonus to its employees as stated after completion of each accounting year as provided under the Payment of Bonus Act, 1965. Lastly the respondents are hereby further directed to give all the benefits to the petitioner/union as stated above forthwith, failing which union/petitioner would be entitled for interest @ 9% per annum from the date of Award till its realization. The parties, however, shall bear their own costs.

36. The reference is answered in the aforesaid terms.

37. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

38. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30<sup>th</sup> day of December, 2017.

Sd/-  
(K. K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*



## आबकारी एवं कराधान विभाग

अधिसूचना

शिमला-2, 18 दिसम्बर, 2018

**संख्या: ई.एक्स.एन.-बी.(1)-3/2018.**—हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश माल और सेवा कर अधिनियम, 2017 (2017 का 10) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अतिरिक्त आयुक्त, राज्य कर एवं आबकारी (ग्रेड-I)/अतिरिक्त आयुक्त, राज्य कर एवं आबकारी (ग्रेड-II) को इस अधिनियम की धारा 107 के प्रयोजनों को कार्यान्वित करने के लिए अतिरिक्त आयुक्त (अपील) के रूप में नियुक्त करते हैं।

आदेश द्वारा,  
(जगदीश चन्द्र शर्मा),  
प्रधान सचिव (आबकारी एवं कराधान)।

[Authoritative English text of this Department Notification No. EXN-B(1)-3/2018 dated 18-12-2018 required under clause (3) of article 348 of the Constitution of India].

## EXCISE AND TAXATION DEPARTMENT

## NOTIFICATION

Shimla-2, the 18<sup>th</sup> December, 2018

**No. EXN-B(1)-3/2018.**—In exercise of the powers conferred by section 3 of the Himachal Pradesh Goods and Services Tax Act, 2017 (10 of 2017), the Governor of Himachal Pradesh, is pleased to appoint Additional Commissioner of State Taxes and Excise (Grade-I)/ Additional Commissioner of State Taxes and Excise (Grade-II) as Additional Commissioner (Appeals) for carrying out the purposes of section 107 of this Act.

By order,  
JAGDISH CHANDER SHARMA,  
Principal Secretary (E&T).

**In the Court of Shri Raman Gharsangi (H.A.S.), Special Marriage Officer-cum-Sub-Divisional Magistrate, Manali, District Kullu, H.P.**

In the matter of :

Anuraag Chander Sood aged 34 years s/o Sh. Chander Mohan Sood, resident of Village and P.O. Vashisht, Tehsil Manali, Distt. Kullu, H.P. and Nitika Sood aged 32 years daughter of Shri Raghunath Sood at present wife of Sh. Anuraag Chander Sood, resident of Village and P.O. Vashisht, Tehsil Manali, Distt. Kullu, H.P.

*Versus*

General Public

*An application for registration of marriage under Special Marriage Act, 1954.*



Whereas Anuraag Chander Sood aged 34 years s/o Sh. Chander Mohan Sood, resident of Village and P.O. Vashisht, Tehsil Manali, Distt. Kullu, H.P. and Nitika Sood aged 32 years daughter of Shri Raghunath Sood at present wife of Sh. Anuraag Chander Sood, resident of Village and P.O. Vashisht, Tehsil Manali, Distt. Kullu, H.P. have presented an application on 03-12-2018 in this court for the registration of marriage under Special Marriage Act, 1954. Hence this proclamation is hereby issued for the information of general public that if any person have any objection for the registration of the above marriage can appear in this court on 02-01-2019 at 2.00 P.M. to object registration of above marriage personally or through an authorized agent failing which this marriage will be registered under this Act, 1954 accordingly.

Given under my hand and seal of the court on 3rd day of December, 2018.

Seal.

RAMAN GHARSANGHI (HAS),  
Special Marriage Officer-cum-Sub-Divisional Magistrate,  
Manali, District Kullu, H.P.

ब अदालत श्री दौलत राम ठाकुर, सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, कुल्लू,  
जिला कुल्लू, हि0 प्र0

केस नम्बर : 4/CNR/T/2018

दिनांक : 13/12/2018

श्री दाते राम पुत्र श्री वाला राम, निवासी गांव कठियाला ग्रां, डाकघर लरांकेलों, तहसील व जिला  
कुल्लू, हि0 प्र0 प्रार्थी।

बनाम

आम जनता

प्रतिवादीगण।

विषय.—प्रार्थना-पत्र बराए राजस्व अभिलेख में नाम दुरुस्ती बारे।

उपरोक्त विषय पर श्री देविन्दर पुत्र श्री वाला राम, निवासी गांव कठियाला ग्रां, डाकघर लरांकेलों, तहसील व जिला कुल्लू, हि0 प्र0 ने दिनांक 26-12-2017 को अधोहस्ताक्षरी के कार्यालय में नाम दुरुस्ती हेतु प्रार्थना-पत्र दायर किया है। प्रार्थना-पत्र में प्रार्थी श्री देविन्दर पुत्र श्री वाला राम दर्ज है, का दुरुस्त नाम दाते राम पुत्र श्री वाला राम है, को सही दर्ज करने बारे प्रार्थना की है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि देविन्दर उर्फ दाते राम पुत्र श्री वाला राम का नाम दुरुस्त करने बारे कोई उजर/एतराज हो तो वह अधोहस्ताक्षरी के कार्यालय में इस इशतहार के जारी होने के एक माह के भीतर लिखित रूप में उजर/एतराज दायर करेगा। यदि उक्त समय अवधि तक कोई भी उजर/एतराज दायर नहीं हुआ तो राजस्व रिकार्ड में श्री देविन्दर उर्फ दाते राम सही नाम दर्ज करने बारे आदेश जारी किया जाएगा।

आज दिनांक 13-12-2018 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार  
कुल्लू, जिला कुल्लू, हि0 प्र0।